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LEGAL COMPILATION: STATUTES AND LEGISLATIVE HISTORY, EXECUTIVE ORDERS, REGULATIONS, GUIDELINES AND REPORTS. E. PESTICIDES. VOLUME I

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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Legal Compilation

Statutes and Legislative History
Executive Orders
Regulations
Guidelines and Reports

JANUARY 1973

WILLIAM D. RUCKELSHAUS
Administrator

56p

FOREWORD

It has been said that America is like a gigantic boiler in that once the fire is lighted, there are no limits to the power it can generate. Environmentally, the fire has been lit!

With a mandate from the President and an aroused public concern over the environment, we are experiencing a new American Revolution, a revolution in our way of life. The era which began with the industrial revolution is over and things will never be quite the same again. We are moving slowly, perhaps even grudgingly at times, but inexorably into an age when social, spiritual and aesthetic values will be prized more than production and consumption. We have reached a point where we must balance civilization and nature through our technology.

The U.S. Environmental Protection Agency, formed by Reorganization Plan No. 3 of 1970, was a major commitment to this new ethic. It exists and acts in the public's name to ensure that due regard is given to the environmental consequences of actions by public and private institutions.

In a large measure, this is a regulatory role, one that encompasses basic, applied, and effects research; setting and enforcing standards; monitoring; and making delicate risk-benefit decisions aimed at creating the kind of world the public desires.

The Agency was not created to harass industry or to act as a shield behind which man could wreak havoc on nature. The greatest disservice the Environmental Protection Agency could do to American industry is to be a poor regulator. The environment would suffer, public trust would diminish, and instead of free enterprise, environmental anarchy would result.

It was once sufficient that the regulatory process produce wise and well-founded courses of action. The public, largely indifferent to regulatory activities, accepted agency actions as being for the "public convenience and necessity." Credibility gaps and cynicism make it essential not only that today's decisions be wise and well-founded but that the public know this to be true. Certitude, not faith, is de rigueur.

In order to participate intelligently in regulatory proceedings, the citizen should have access to the information available to the

agency. EPA's policy is to make the fullest possible disclosure of information, without unjustifiable expense or delay, to any interested party. With this in mind, the EPA Compilation of Legal Authority was produced not only for internal operations of EPA, but as a service to the public, as we strive together to lead the way, through the law, to preserving the earth as a place both habitable by and hospitable to man.

WILLIAM D. RUCKELSHAUS,
Administrator
U.S. Environmental Protection Agency

PREFACE

Reorganization Plan No. 3 of 1970 transferred 15 governmental units with their functions and legal authority to create the U.S. Environmental Protection Agency. Since only the major laws were cited in the Plan, the Administrator, William D. Ruckelshaus, requested that a compilation of EPA legal authority be researched and published.

The publication has the primary function of providing a working document for the Agency itself. Secondarily, it will serve as a research tool for the public.

A permanent office in the Office of Legislation has been established to keep the publication updated by supplements.

It is the hope of the EPA that this set will assist in the awesome task of developing a better environment.

MARY LANE REED WARD GENTRY, J.D.
Assistant Director for Field Operations
Office of Legislation
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ACKNOWLEDGEMENT

The idea of producing a compilation of the legal authority of EPA was conceived and commissioned by William D. Ruckelshaus, Administrator of EPA. The production of this compilation involved the cooperation and effort of numerous sources, both within and outside the Agency. The departmental libraries at Justice and Interior were used extensively; therefore we express our appreciation to Marvin P. Hogan, Librarian, Department of Justice; Arley E. Long, Land & Natural Resources Division Librarian, Department of Justice; Frederic E. Murray, Assistant Director, Library Services, Department of the Interior.

For exceptional assistance and cooperation, my gratitude to: Gary Baise, formerly Assistant to the Administrator, currently Director, Office of Legislation, who first began with me on this project; A. James Barnes, Assistant to the Administrator; K. Kirke Harper, Jr., Special Assistant for Executive Communications; John Dezzutti, Administrative Assistant, Office of Executive Communications; Roland O. Sorensen, Chief, Printing Management Branch, and Jacqueline Gouge and Thomas Green, Printing Management Staff; Ruth Simpkins, Janis Collier, Wm. Lee Rawls, Peter J. McKenna, James G. Chandler, Jeffrey D. Light, Randy Mott, Thomas H. Rawls, John D. Whittaker, John M. Himmelberg, Dana W. Smith, and Linda L. Payne, and a beautiful staff who gave unlimited effort; and to many others behind the scenes who rendered varied assistance.

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INSTRUCTIONS

The goal of this text is to create a useful compilation of the legal authority under which the U.S. Environmental Protection Agency operates. These documents are for the general use of personnel of the EPA in assisting them in attaining the purposes set out by the President in creating the Agency. This work is not intended and should not be used for legal citations or any use other than as reference of a general nature. The author disclaims all responsibility for liabilities growing out of the use of these materials contrary to their intended purpose. Moreover, it should be noted that portions of the Congressional Record from the 92nd Congress were extracted from the "unofficial" daily version and are subject to subsequent modification.

EPA Legal Compilation consists of the Statutes with their legislative history, Executive Orders, Regulations, Guidelines and Reports. To facilitate the usefulness of this composite, the Legal Compilation is divided into the eight following chapters:

- A. General
- B. Air
- C. Water
- D. Solid Waste
- E. Pesticides
- F. Radiation
- G. Noise
- H. International

PESTICIDES

The chapter labeled "Pesticides" and color coded green contains the legal authority of the Agency as it applies to pesticide pollution abatement. It is well to note that any law which is applicable to more than one chapter of the Compilation will appear in each of the chapters; however, its legislative history will be cross-referenced into the "General" chapter where it is printed in full.

SUBCHAPTERS

Statutes and Legislative History

For convenience, the Statutes are listed throughout the Compilation by a one-point system, i.e., 1.1, 1.2, 1.3, etc., and Legislative History begins wherever a letter follows the one-point system. Thusly, any 1.1a, 1.1b, 1.2a, etc., denotes the public laws comprising the 1.1, 1.2 statute. Each public law is followed by its legislative history. The legislative history in each case consists of the House Report, Senate Report, Conference Report (where applicable), the Congressional Record beginning with the time the bill was reported from committee.

Example:

1.1 The Federal Insecticide, Fungicide, and Rodenticide Acts, as amended, 7 U.S.C. §§135–135k (1970).
    1.1a The Insecticide Act, April 26, 1910, P.L. 61–152, 36 Stat. 331.
        (1) Senate Committee on Agriculture and Forestry, S. REP. No. 436, 61st Cong., 2d Sess. (1910).
        (2) House Committee on Interstate and Foreign Commerce, H.R. REP. No. 990, 61st Cong., 2d Sess. (1910).
        (3) Congressional Record, Vol. 45 (1910):
            (a) April 4: Debated, amended and passed Senate, pp. 4204–4206;
            (b) April 18: Debated, amended and passed House, pp. 4914–4920;
            (c) April 19: Senate agrees to House amendments, p. 4959.

This example not only demonstrates the pattern followed for legislative history, but indicates the procedure where only one section of a public law appears. You will note that the Congressional Record cited pages are only those pages dealing with the discussion and/or action taken pertinent to the section of law applicable to EPA. In the event there is no discussion of the pertinent section, only action or passage, then the asterisk (*) is used to so indicate, and no text is reprinted in the Compilation. In regard to the situation where only one section of a public law is applicable, then only the parts of the report dealing with same are printed in the Compilation.

Secondary Statutes

Many statutes make reference to other laws and rather than have this manual serve only for major statutes, these secondary statutes have been included where practical. These secondary statutes are indicated in the table of contents to each chapter by a bracketed cite to the particular section of the major act which made the reference.

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The United States Code, being the official citation, is used throughout the Statute section of the Compilation.

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1.4	The Public Health Service Act, as amended, 42 U.S.C. §241, 243, 246, 264 (1970).	Reorg. Plan No. 3 of 1970.
1.5	Special Packaging of Household Substances for the Protection of Children, 15 U.S.C. §1471 *et seq.* (1970).	In first section of Act, direct reference is made to both FIFRA and the Federal Food, Drug, and Cosmetic Act, section over which we were given authority through Reorg. Plan No. 3 of 1970.
1.6	Hearings: Presiding Employees: Powers and Duties; Burden of Proof; Evidence; Records as a Basis of Decision, 5 U.S.C. §556(c) (1966).	Referred to in the FIFRA at §135b and FD&C Act at §246a(d) (5).
1.7	Record on Review and Enforcement of Agency Orders, as amended, 28 U.S.C. §2112 (1966).	Referred to in FIFRA at §135b(d), and FD&C Act at §346a (i) (2) (3), 348(g) (2), and Special Packaging of Household Substances Act at §1474 (b) (1).
1.8	Courts of Appeals; Certiorari, Appeal; Certified Questions, as amended, 28 U.S.C. §1254 (1948).	Referred to in FIFRA at §135b(d), and FD&C Act at §§346a(i)(5), 348(g)(5), and Special Packaging of Household Substances Act at §1474(b)(5).
1.9	Adulterated Food, as amended, 21 U.S.C. §432(a) (1968).	Referred to in FD&C Act at §§346, 346a(a), 348(a((2).
1.10	Appointment and Compensation of Advisory Committee, Color Additive Amendments of 1960, as amended, 21 U.S.C. §§376(b)(5) (D) (1970).	Referred to in FD&C Act at §346a(g).
1.11	Regulations and Hearings—Authority to Promulgate Regulations, 21 U.S.C. §371 (1960).	Referred to in FD&C Act at §346a(k), and Special Packaging of Household Substances Act at §1474(a).
1.12	Penalties—Violation of §331 of this Title, 21 U.S.C. §333(c) (1970).	Referred to in FD&C Act in §346a(n).

Statutes	Source
1.13 Research and Development Act, Contracts, as amended, 10 U.S.C. §§2353, 2354 (1956).	Referred to in Public Health Service Act at §241(h).
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1.15 Judicial Review, Relief Pending Review; Scope, as revised, 5 U.S.C. §§705, 706(2)(A),(B),(C),(D) (1966).	Special Packaging of Household Substances Act at §1474(b)(3),(4).
1.16 Per Diem, Travel and Transportation Expenses; Experts and Consultants; Individuals Serving Without Pay, as amended, 5 U.S.C. §5703 (1966).	Referred to in Special Packaging of Household Substances Act at §1475(b).

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The Executive Orders are listed by a two-point system (2.1, 2.2, etc.). Executive Orders found in General are ones applying to more than one area of the pollution chapters.

Regulations

The Regulations are noted by a three-point system (3.1, 3.2, etc.). Included in the Regulations are those not only promulgated by the Environmental Protection Agency, but those under which the Agency has direct contact.

Guidelines and reports

This subchapter is noted by a four-point system (4.1, 4.2, etc.). In this subchapter is found the statutorily required reports of EPA, published guidelines of EPA, selected reports other than EPA's and inter-departmental agreements of note.

UPDATING

Periodically, a supplement will be sent to the interagency distribution and made available through the U.S. Government Printing Office in order to provide an accurate working set of EPA Legal Compilation.

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  - (c) Oct. 7: Amended and passed Senate, pp. 35496–35497;* 1177
  - (d) Oct. 14: House agrees to conference report, p. 36655;* 1177
  - (e) Oct. 14: Senate agrees to conference report, p. 36885.* 1177

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[Referred to in 42 U.S.C. §241(h)] 1178

1.14a Armed Forces Research and Development Act, July 16, 1952, P.L. 82–557, §§4, 5, 66 Stat. 725. 1179

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1.1 THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACTS, AS AMENDED

7 U.S.C. §§135–135k (1970)

§ 135. Definitions

For the purposes of sections 135 to 135k of this title—

(a) The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Administrator shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(b) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Administrator, but not including equipment used for the application of economic poisons when sold separately therefrom.

(c) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(d) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(e) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Administrator shall declare to be a pest.

(f) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(g) The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(h) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

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(i) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(j) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(k) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or ellworms.

(l) The term "weed" means any plant which grows where not wanted.

(m) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(n) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(o) The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 135d of this title);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(p) The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(q) The term "inert ingredient" means an ingredient which is not active.

(r) The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(s) The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

(u) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(v) The term "registrant" means the person registering any economic poison pursuant to the provisions of sections 135–135k of this title.

(w) The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

(x) The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the Environmental Protection Agency, the United States Department of the Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

(y) The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(z) The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under sections 135 to 135k of this title other than the registration number assigned to the economic poison;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Administrator may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of sections 135–135k of this title to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided,* That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or

(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of Title 15.

(June 25, 1947, c. 125, § 2, 61 Stat. 163; Aug. 7, 1959, Pub:L. 86–139, § 2, 73 Stat. 286; May 12, 1964, Pub.L. 88–305, § 1, 78 Stat. 190; 1970 Reorg.Plan No. 3. § 2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat.—; Dec. 30, 1970, Pub.L. 91–601, § 7(b), 84 Stat. 1673.)

§ 135a. Prohibited acts

(a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of section 135b of this title, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided,* That in the discretion of the Administrator, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold;

(c) the net weight or measure of the content: *Provided,* That the Administrator may permit reasonable variations; and

(d) when required by regulation of the Administrator to effectuate the purposes of sections 135 to 135k of this title, the registration number assigned to the article under such sections.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 135d of this title, unless the label shall bear, in addition to any other matter required by sections 135–135k of this title—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with sections 135 to 135k of this title, or any other white powder economic poison which the Administrator, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided,* That the Administrator may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

(b) Notwithstanding any other provision of sections 135–135k of this title, no article shall be deemed in violation of said sections when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

(c) It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in sections 135–135k of this title or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of said sections;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Administrator to have access to and to copy such records as authorized by section 135c of this title;

(3) for any person to give a guaranty or undertaking provided for in section 135e of this title which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 135e of this title may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency, or other Federal agencies, or to the courts in response to a subpena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Administrator may prescribe, any information relative to formulas of products acquired by authority of section 135b of this title.

(June 25, 1947, c. 125, § 3, 61 Stat. 166; May 12, 1964, Pub.L. 88–305, §§ 2, 6, 78 Stat. 190, 193; 1970 Reorg.Plan No. 3, § 2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.

§ 135b. Registration of economic poisons—General requirements; single economic poisons; supplement statements; filing and contents of statements

(a) Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the

District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Administrator: *Provided,* That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the applicant for registration shall file with the Administrator a statement including—

(1) the name and address of the applicant for registration and the name and address of the person whose name will appear on the label, if other than the applicant for registration;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based.

Submission of formula; registration by Administrator upon compliance with requirements

(b) The Administrator, whenever he deems it necessary for the effective administration of sections 135 to 135k of this title, may require the submission of the complete formula of the economic poison. If it appears to the Administrator that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 135a of this title, he shall register it.

Notification of noncompliance with requirements; corrections; refusal, suspension or cancellation of registration by Administrator; effective date of cancellation; advisory committees and procedures; objections; public hearings; Administrator's orders; consultation with other agencies; confidential information; public hazard suspension; orders reviewable; defense of registration

(c) If it does not appear to the Administrator that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of sections 135 to 135k of this title, he shall notify the applicant for registration of the manner in which the article, labeling, or other material required to be submitted fail to comply with said sections so as to afford the applicant for registration an opportunity to make the corrections necessary. If, upon receipt of such notice, the applicant for registration does not make the corrections, the Administrator shall refuse to register the article. The Administrator, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of sections 135 to 135k of this title. Whenever the Administrator refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Administrator. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Administrator. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Administrator shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Administrator shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the Environmental Protection Agency, shall have the right to consult, with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Administrator for an additional sixty days, the committee shall, after independent study of the data submitted by the Administrator and all other pertinent information available to it, submit a report and recommendation to the Administrator as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Administrator shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Administrator, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Administrator shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Administrator by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 1006(c) of Title 5. The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Administrator, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Administrator shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Administrator by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 135a(c) (4) of this title, information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Administrator. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the Environmental Protection Agency, as provided for herein, and in connection with its report and recommendations to the Administrator. Notwithstanding any other provision of this section, the Administrator may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Administrator under this section shall be subject to judicial review, in accordance with the provisions of subsection (d) of this section. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 135a of this title.

Judicial review; court of appeals; persons entitled to appeal, petition, record, jurisdiction, conclusiveness of findings, additional evidence, modification of findings and orders; Supreme Court; stay of administrative orders; calendar

(d) In case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Administrator may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 18. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

Shipments between single-ownership plants

(e) Notwithstanding any other provision of sections 135 to 135k of this title, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under said sections.

Time of cancellation and continuance of registration

(f) The Administrator is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Administrator that such registration be continued in effect. (June 25, 1947, c. 125, § 4, 61 Stat. 167; May 12, 1964, Pub.L. 88–305, §§ 3, 4, 78 Stat. 190, 192; 1970 Reorg. Plan No. 3, § 2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135c. Books and records; access and inspection; use in criminal prosecution

For the purposes of enforcing the provisions of sections 135 to 135k of this title, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to said sections, shall, upon request of any employee of the Environmental Protection Agency or any employee of any State, Territory, or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained. (June 25, 1947, c. 125, § 4, 61 stat. 167;

Amend. Oct. 15, 1970, Pub.L. 91–452, Title II, § 204, 84 Stat. 928; 1970 Reorg. Plan No. 3, § 2(a) (8) (i), Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135d. Rules and regulations; examination of economic poisons or devices; notification to violators; certification to United States attorney; duty of attorney; publication of judgments

(a) The Administrator (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of sections 135 to 135k of this title, including the collection and examination of samples of economic poisons and devices subject to said sections and the determination and establishment of suitable names to be used in the ingredient statement. The Administrator is, in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 135a (a) (4) of this title.

(b) The Secretary of the Treasury and the Administrator shall jointly prescribe regulations for the enforcement of section 135h of this title.

(c) The examination of economic poisons or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examination whether they comply with the requirements of sections 135 to 135k of this title, and if it shall appear from any such examination that they fail to comply with the requirements of said sections, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of said sections have been violated by such person, then the Administrator shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in said sections shall be construed as requiring the Administrator to report for prosecution or for the institution of libel proceedings minor violations of said sections whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(d) It shall be the duty of each United States attorney, to whom the Administrator or his agents shall report any violation of sections 135 to 135k of this title, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

(e) The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of sections 135 to 135k of this title. (June 25, 1947, ch. 125, § 6, 61 Stat. 168; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135e. Exemption from penalties

(a) The penalties provided for a violation of section 135a (a) of this title shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of sections 135 to 135k of this title, designating said sections. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of said sections;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Administrator shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Administrator.

(June 25, 1947, ch. 125, § 7, 61 Stat. 169; 1970 Reorg. Plan No. 3, § 2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135f. Penalties

(a) Any person violating section 135a (a) (1) of this title shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

(b) Any person violating any provision other than section 135a (a) (1) of this title shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction for each subsequent offense be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided,* That an offense committed more than five years after the last previous conviction shall be considered a first offense. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Administrator to comply with all the requirements of sections 135 to 135k of this title.

(c) Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 135b of this title, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

(d) When construing and enforcing the provisions of sections 135 to 135k of this title, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed. (June 25, 1947, ch. 125, § 8, 61 Stat. 170; May 12, 1964, Pub. L. 88–305, § 5, 78 Stat.

193; 1970 Reorg. Plan No. 3, §2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135g. Seizures; disposition; costs against claimant

(a) Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it is not registered pursuant to the provisions of section 135b of this title;

(c) if it fails to bear on its label the information required by sections 135 to 135k of this title; or

(d) if it is a white powder economic poison and is not colored as required under said sections; or

(2) in the case of a device if it is misbranded.

(b) If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of sections 135 to 135k of this title or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of said sections or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(c) When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (June 25, 1947, ch. 125, § 9, 61 Stat. 170; May 12, 1964, Pub. L. 88–305, § 6, 78 Stat. 193.)

§ 135h. Imports; prohibition against delivery; penal bonds; imposition of costs; liens

The Secretary of the Treasury shall notify the Administrator of the arrival of economic poisons and devices offered for importation and shall deliver to the Administrator, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in sections 135 to 135k of this title, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further,* That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee. (June 25, 1947, ch. 125, § 10, 61 Stat. 171; 1970 Reorg. Plan No. 3, § 2(a) (8) (i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135i. Delegation of duties

All authority vested in the Administrator by virtue of the provisions of sections 135 to 135k of this title may with like force and effect be executed by such employees of the Environmental Protection Service as the Administrator may designate for the purpose. (June 25, 1947, ch. 125, § 11, 61 Stat. 171; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135j. Appropriations; expenditures

(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of sections 135 to 135k of this title.

(b) The Administrator is authorized from the funds appropriated for sections 135 to 135k of this title to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of said sections. (June 25, 1947, ch. 125, § 12, 61 Stat. 172; 1970 Reorg. Plan No. 3, § 2(a) (8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135k. Cooperation between departments and agencies

The Administrator is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of sections 135 to 135k of this title, and in securing uniformity of regulations. (June 25, 1947, ch. 125, § 13, 61 Stat. 172; 1970 Reorg. Plan No. 3, § 2(a) (8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

1.1a THE INSECTICIDE ACT

April 26, 1910, P.L. 61–152, 36 Stat. 331

AN ACT

CHAP. 191.—An Act For preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, lead arsenates, and other insecticides, and also fungicides, and for regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any insecticide, Paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not to exceed two hundred dollars for the first offense, and, upon conviction for each subsequent offense be fined not to exceed three hundred dollars, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country, of any insecticide, or Paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this Act is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver, to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or any Territory of the United States any such adulterated or misbranded insecticide, or Paris green, or lead arsenate, or fungicide, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided*, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser; but if said articles shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of insecticides, Paris greens, lead arsenates, and fungicides manufactured or offered for sale in the District of Columbia or in any
[p. 331]
Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country or intended for ship-

ment to any foreign country, or which may be submitted for examination by the director of the experiment station of any State, Territory, or the District of Columbia (acting under the direction of the Secretary of Agriculture), or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

SEC. 4. That the examination of specimens of insecticides, Paris greens, lead arsenates, and fungicides shall be made in the Department of Agriculture, by such existing bureau or bureaus as may be directed by the Secretary, for the purpose of determining from such examination whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens are adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

SEC. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any director of experiment station or agent of any State, Territory, or the District of Columbia, under authority of the Secretary of Agriculture, shall present satisfactory evidences of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

SEC. 6. That the term "insecticide" as used in this Act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "Paris green" as used in this Act shall include the product sold in commerce as Paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this Act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. That the term "fungicide" as used in this Act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

SEC. 7. That for the purpose of this Act an article shall be deemed to be adulterated—

In the case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. [p. 332]

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxid (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxid (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength: *Provided, however,* That extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixtures is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part for the article third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

SEC. 8. That the term "misbranded" as used herein shall apply to all insecticides, Paris greens, lead arsenates, or fungicides, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, Paris greens, lead arsenates, or fungicides which are falsely branded as to the State, Territory, or country in which they are manufactured or produced.

That for the purpose of this Act an article shall be deemed to be misbranded—

In the case of insecticides, Paris greens, lead arsenates, and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than Paris greens and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expresed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label: *Provided, however,* That in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [p. 333]

SEC. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this Act.

SEC. 10. That any insecticide, Paris green, lead arsenate, or fungicide that is adulterated or misbranded within the meaning of this Act and is being transported from one State, Territory, or District, to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or any Territory of the United States, or if it be imported from a foreign country for sale, shall be liable to be proceeded against in any district court of the United States within the district wherein the same is found and seized for confiscation by a process of libel for condemnation.

And if such article is condemned as being adulterated or misbranded, within the meaning of this Act, the same shall be disposed of by destruction or sale as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: *Provided, however,* That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

SEC. 11. That the Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request, from time to time, samples of insecticides, Paris greens, lead arsenates, and fungicides which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony; and if it appear from the examination of such samples that any insecticide, or Paris green, or lead arsenate, or fungicide offered to be imported into the United States is adulterated or misbranded within the meaning of this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when de- [p. 334] manded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

SEC. 12. That the term "Territory," as used in this Act, shall include the District of Alaska and the insular possessions of the United States. The word "person," as used in this Act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the other person.

SEC. 13. This Act shall be known and referred to as "The insecticide Act of 1910."

SEC. 14. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and eleven.

Approved, April 26, 1910. [p. 335]

1.1a (1) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 436, 61st Cong., 2d Sess. (1910)

ADULTERATED OR MISBRANDED FUNGICIDES, INSECTICIDES, ETC.

MARCH 23, 1910.—Ordered to be printed.

MR. GUGGENHEIM, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 6131.]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 6131) for preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, lead arsenates, and other insecticides, and also fungicides, and for regulating traffic therein, and for other purposes, having had the same under consideration beg leave to report it with amendments and recommend that the bill as amended be passed.

The suggested amendments are as follows:

Strike out after the word "misdemeanor," on page 1, line 8, of the bill all of the remaining words on page 1, to wit:

> and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars, and for each subsequent offense and conviction thereof shall be fined not less than five hundred dollars, or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

And insert in lieu thereof the following:

> and shall, upon conviction thereof, be fined not to exceed two hundred dollars for the first offense, and upon conviction for each subsequent offense be fined not to exceed three hundred dollars or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court.

On page 5, line 11, after the words "Sec. 6," insert the word "That."

On page 6, line 19, after the word "water," strike out the word "can," and insert in lieu thereof the word "may."

On page 6, line 23, after the words "In the case of insecticides," insert the words "or fungicides."

On page 6, line 24, strike out the words "or fungicides."

On page 7, line 7, after the words "vegetation when used," strike out the words "as recommended by the manufacturer." [p. 1]

The bill was referred to the Secretary of Agriculture with a request for his views thereon, and the measure as amended is exactly in line with his recommendation.

The changes suggested above, except as to the words "when used as recommended by the manufacturer," bring the bill in entire accord with House bill No. 20989, which was transmitted to the Agricultural Department, and in regard to which the Secretary of Agriculture reports as follows:

> The department is familiar with the proposed legislation * * * and believes that such legislation is urgently needed. Senate bill No. 6131 is an excellent bill, but it is the opinion of this department that H. R. 20989, which is a very slightly modified form of the Senate bill, is better. There is only one phrase which in the opinion of the experts of this department should be removed from H. R. 20989, and that occurs in line 10, page 7, and reads, "when used as recommended by the manufacturer."

The following is the Secretary's report in full:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., March 14, 1910.

SIR: I am in receipt of your letter of March 11, accompanied by a copy of Senate bill No. 6131, asking the attitude of the department with regard to the bill.

The department is familiar with the proposed legislation to restrict the sale of inferior or adulterated or misbranded insecticides and fungicides, and believes that such legislation is urgently needed. Senate bill No. 6131 is an excellent bill, but it is the opinion of this department that H.R. 20989, which is a very slightly modified form of the Senate bill, is better. There is only one phrase which, in the opinion of the experts of this department, should be removed from H. R. 20989, and that occurs in line 10, page 7, and reads, "when used as recommended by the manufacturer."

It goes without saying that those enforcing this law would not bring a case under this fourth count unless the insecticide, as recommended to be used by the manufacturer, was injurious to vegetation, hence the phrase "when used as recommended by the manufacturer" is useless. With the fourth count standing as it does now it makes it impossible for those enforcing the law to carry out this particular provision until the insecticide has been tested exactly as prescribed by the manufacturer. It may be a matter of common knowledge among entomologists that a particular insecticide would seriously injure foliage, and we would get any number of entomologists to go on the stand and say exactly similar insecticides had injured vegetation, and yet under this count as it stands, we could not prosecute the manufacturer until we had tried his particular insecticide exactly as he had said try it.

For example, everyone knows that white arsenic is very injurious to trees and will kill the trees as well as the insects. A man might put out white arsenic (and this has been done) and call it by some fancy name—say "Bug Buster." Under provision 4 as it now stands we could not prosecute this man, knowing that his insecticide would seriously injure trees, until we had tried the insecticide just as he had said. If he had said it was good for the codling moth on apples and gave directions for applying it to an apple tree, we would have to wait, if it was in the middle of the winter, till the next summer and try it on apple trees, knowing all the time that it would burn.

In the standard for lead arsenate given on page 6, lines 11 to 22, Senate bill

6131, the third item in the standard should read just as in the bill, ie., "third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum (0.75 per cent) of arsenic oxid (As_2O_5)."

Very respectfully,

JAMES WILSON, *Secretary.*

Hon. S. GUGGENHEIM,
United States Senate.

The legislation has the unanimous indorsement of practically all the organizations of fruit growers in the country, and practically all of the leading manufacturers are heartily in favor of the measure.

The following are some of the leading organizations which have indorsed this legislation: National Grange (Patrons of Husbandry), [p. 2] National Horticultural Congress, American Apple Growers' Congress, American Pomological Society, American Association of Economic Entomologists, Association of Official Agricultural Chemists, Association of Horticultural Inspectors, Western New York Horticultural Society, Maryland Horticultural Society, Missouri State Horticultural Society, Ozark Fruit Growers' Association, Georgia State Horticultural Society, Maine Pomological Society, New Hampshire Horticultural Society, Vermont Horticultural Society, Connecticut Pomological Society, Illinois State Horticultural Society, Peninsula Horticultural Society (Delaware and Maryland), Florida Horticultural Society, Indiana Horticultural Society, Pennsylvania Horticultural Society, Michigan Horticultural Society, Missouri State Board of Agriculture, Nebraska State Horticultural Society, St. Paul Market Gardeners' Association, New York State Fruit Growers' Association, Illinois Commercial Apple Growers' Association, and numerous state boards of agriculture, commissioners of agriculture, state and local granges, local fruit growers' associations, and farmers' clubs.

Your committee considers the legislation of vital interest to the fruit and truck growers of the country and recommends its enactment into law. [p. 3]

1.1a (2) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H.R. REP. No. 990, 61st Cong., 2d Sess. (1910)

ADULTERATED OR MISBRANDED FUNGICIDES, INSECTICIDES, ETC.

APRIL 12, 1910.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. KNOWLAND, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 6131.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 6131) for preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, lead arsenates, and other insecticides, and also fungicides, and for regulating traffic therein, and for other purposes, beg leave to report the bill back with certain amendments with a recommendation that the amendments be agreed to and the bill as amended be passed.

Amend the bill as follows:

Page 2, lines 19 and 20, strike out the words "the territories" and insert in lieu therof the words "any territory."

Page 4, line 7, strike out the words "or under the direction and supervision of such bureau" and insert in lieu thereof the words "by such existing bureau or bureaus as may be directed by the Secretary."

Page 7, lines 20 and 21, strike out the following: "(other than Paris greens and lead arsenates)."

Page 9, line 16, insert before the word "District" the word "or" and strike out the words "or insular possession."

Page 9, lines 19 and 20, strike out the words "the Territories or insular possession" and insert in lieu thereof the words "any Territory."

Page 10, line 13, insert before the word "District" the word "or" and strike out the words "or insular possession."

Page 12, line 6, insert after the word "include" the words "the District of Alaska and."

Page 12, line 6, strike out the word "possession" and insert in lieu thereof the word "possessions." [p. 1]

Page 12, insert after line 17, as a new section, the following:

SEC. 13. This act shall be known and referred to as "The insecticide act of 1910."

Page 12, line 18, strike out the figures "13" and insert in lieu thereof the figures "14."

Page 12, line 19, strike out the words "July, nineteen hundred and ten" and insert in lieu thereof the words "January, nineteen hundred and eleven."

The bill is intended to prevent the transportation in interstate and foreign commerce of adulterated and misbranded insecticides and fungicides. On March 23, 1909, Mr. Lowden introduced a bill (H.R. 3658) relating to this subject-matter, which bill was referred by your committee to the Department of Agriculture for information and suggestions. A few amendments were suggested by that department to the form and language of the bill, which amendments were incorporated in the bill (H.R. 20989) introduced by Mr. Lowden on February 15 last, and that bill was taken up for consideration by your committee and hearings at some length were given on the subject-matter. Senate bill 6131, which is reported, was referred to your committee on April 5, 1910, and is substantially the same as House bill 20989.

No one has appeared before your committee in opposition to the bill, and so far as your committee is informed no one is opposed to its passage.

Insecticides and fungicides are not classed as either foods or drugs, and consequently are not covered by the so-called pure food and drugs law, the language of which act this bill in form follows. The bill has the active and earnest indorsement of the Department of Agriculture, and especially the bureaus of Chemistry and Entomology in that department. It likewise has the indorsement of the leading manufactures of insecticides and fungicides, of horticultural societies, and of persons interested in the growing of horticultural, agricultural, and market garden crops.

The use of insecticides and fungicides in the raising of certain classes of crops has become a necessity throughout the country. The value of crops in the United States last year aggregated nearly $8,000,000,000, and experts in the Department of Agriculture, after the most careful investigation, estimate that fully 10 per cent of our crops are lost through insect pests and another 10 per cent from fungous diseases. These figures convey the somewhat startling information that as a result of insects and fungous diseases one-fifth of our crops are lost, representing a money value, in round numbers, of over one billion and a half dollars.

It is authoritatively estimated that one-third of the insects and plant diseases can be successfully combated by the use of insecticides and fungicides. It developed in the hearings that between $20,000,000 and $25,000,000 were paid out annually by fruit growers and farmers for insecticides, which conveys some idea as to the importance of the bill. In a single State of the Union, California, the annual value of the fruit crop is over $60,000,000, and increasing at the rate of $2,00,000 yearly. Last year this State shipped over 32,500 carloads of citrus fruits alone, representing an investment of over $127,000,000.

The Department of Agriculture is engaged constantly in the study of the use and proper application of insecticides and fungicides and publishes formulas for their use and these formulas [p. 2] depend for their value upon the strength and purity of the chemicals so used. Under existing conditions, with the strength and purity of the chemicals frequently varying, their use as insecticides and fungicides is often worse than useless. For proper application the chemicals must not be too strong or too weak. If too strong they will probably destroy or injure the vegetation and if too weak they will not affect the insects or fungi. One instance was cited during the hearings where an orchard in Maryland containing 30,000 peach trees had been practically wiped out as a result of the owner spraying with a solution recommended for San Jose scale, by a certain firm, which contained ingredients highly injurious to the trees.

Insect powders sold for household use frequently contain poison. For instance, the statement was made to the committee by the chief of the insecticide and fungicide laboratory of the Bureau of Chemistry that of 105 samples of pyrethrum powder sold for the extermination of flies and other insects, 19 contained lead chromate, which is deleterious to human beings when breathed, these powders being promiscuously sprinkled about dwellings and endangering the health of occupants.

Indorsements of the bill have been filed with your committee by, among others, the following:

Executive committee, Manufacturers, Entomologists, and Agricultural Chemists, Durham, N. H.

Massachusetts Agricultural Experiment Station, Amherst, Mass.

Ohio Agricultural Experiment Station, Wooster, Ohio.

Nursery and Orchard Inspection, Michigan State Board of Agriculture, East Lansing, Mich.

Nursery and Orchard Division, Department of Agriculture, Columbus.

The Growers' Association of Minnesota, St. Paul, Minn.

Purdue University Agricultural Experiment Station, La Fayette, Ind.

New York State College of Agriculture at Cornell University, Ithaca, N. Y.

University of Idaho, College of Agriculture and Experiment Station, Moscow, Idaho.

Missouri State Fruit Experiment Station, Mountain Grove, Mo.

Pennsylvania Department of Agriculture, Harrisburg, Pa.

Florida Citrus Exchange.

Agricultural Experiment Station of the North Carolina College of Agriculture and Mechanic Arts, West Raleigh, N. C.

Minnesota State Horticultural Society, Faribault, Minn.

Iowa State Horticultural Society, Des Moines, Iowa.

Boston Market Gardeners' Association, Brighton, Mass.

Agricultural Experiment Station of the Rhode Island State College, Kingston, R. I.

The Ohio State University, Columbus, Ohio.

University of Minnesota Agricultural Experiment Station, St. Paul, Minn.

Ohio Department of Agriculture, Division of Farmers' Institutes, New Richmond, Ohio.

Georgia Fruit Exchange, Marshallville, Ga.

Maryland Agricultural College and Experiment Station, State Horticultural Department, College Park, Md.

National Grange (Patrons of Husbandry).

National Horticultural Congress.

American Apple Growers' Congress.

American Pomological Society.

American Association of Economic Entomologists.

Association of Official Agricultural Chemists.

Association of Horticultural Inspectors.

Western New York Horticultural Society.

Maryland Horticultural Society.

Missouri State Horticultural Society.

Ozark Fruit Growers' Association.

Georgia State Horticultural Society. [p. 3]

Maine Pomological Society.

New Hampshire Horticultural Society.

Vermont Horticultural Society.

Connecticut Pomological Society.

Illinois State Horticultural Society.

Peninsula Horticultural Society (Delaware and Maryland).

Florida Horticultural Society.

Indiana Horticultural Society.

Pennsylvania Horticultural Society.

Michigan Horticultural Society.

Missouri State Board of Agriculture.

Nebraska State Horticultural Society.

St. Paul Market Gardeners' Association.

New York State Fruit Growers' Association.

Illinois Commercial Apple Growers' Association.

W. R. Wilkinson, St. Louis, Mo.

H. Platt & Sons, Como, Mont.

Andrews Nursery, Faribault, Minn.

E. E. Rudy, Rudy, Ark.

I. C. Hammond, Onset, Mass.

M. B. Greensfelder, Clayton, Mo.

W. F. Allen, Salisbury, Md.
C. Louis Allen, Aberdeen, S. Dak.
Orlando Harrison, Berlin, Md.
W. W. Farnsworth, Waterville, Ohio.
H. W. Miller, Paw Paw, W. Va.
Eugene Weston, Canon City, Colo.
L. C. Marston, Smithburg, Md.
H. W. Schmitkons, Lorain, Ohio.
I. F. Murph, Marshallville, Ga.
C. F. Dixon, Cleveland, Ohio.
H. A. Squires, Inza, Mo.

Also numerous state boards of agriculture, commissioners of agriculture, state and local granges, local fruit growers' associations, and farmers' clubs.

The following letters from the Department of Agriculture are attached as a part of this report:

DEPARTMENT OF AGRICULTURE, OFFICE OF THE SECRETARY,
Washington, D.C., February 3, 1910.

DEAR MR. MANN: I beg to transmit herewith Doctor Wiley's report with accompaniments on the bill, H.R. 3658, to prevent the manufacture, sale, or transportation of adulterated or misbranded insecticides, etc. Doctor Wiley thinks it not only a good bill as drawn, but one that is badly needed. In this opinion I concur.

Very truly, yours,

JAMES WILSON, *Secretary.*

Hon. JAMES R. MANN,
House of Representatives.

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF CHEMISTRY,
Washington, D.C., February 1, 1910.

Relative to H.R. bill No. 3658, entitled "A bill for preventing the manufacture, sale, or transportation of adulterated or misbranded fungicides, Paris greens, lead arsenates, and other insecticides, and for regulating traffic therein, and for other purposes;" I have carefully gone over the provisions of the bill and am of the opinion that it is not only a good bill as drawn, but that it is badly needed by reason of (1) the many misbranded and adulterated insecticides and fungicides sold on the American market; (2) also because it will tend to unify state legislation on this subject, which is not now uniform, and (3) because it will protect one State against another, and will protect the inhabitants of the Territories and the District of Columbia.

A slightly modified form of this bill is now advocated by entomologists, agricultural chemists, and manufacturers of insecticides. The modification, in my opinion, is an improvement over the old bill. I am inclosing a copy of the modified bill.

[p. 4]

As to specific cases where we have found insecticides adulterated, I would respectfully call Mr. Mann's attention to Bulletins 68, 76, and 82 of this bureau, copies of which are inclosed, and to a bulletin on lead arsenate, which is now in press. We may sum up certain facts brought out in these bulletins under the following heads:

(1) Of 45 samples of Paris green bought on the open market 19 contained more sodium sulphate (a soluble impurity) than should be allowable, and 7 contained objectionable quantities of soluble arsenic, which would scorch the foliage.

(2) A sample of London purple contained an objectionable amount of sand, for which the consumer was paying at the same rate as for London purple.

(3) A large number of insecticides, containing arsenic, contained so much soluble arsenic that they would seriously injure trees.

(4) Some of the insecticides contain as large amounts as 98 per cent of inert material that would have no effect on insects.

(5) The so-called whale-oil soaps are not really made from whale oil.

(6) Many insect destroyers are really worth only about 3 or 4 cents, and are sold under some fancy name for from 10 to 25 times what they are worth.

(7) Some insecticides contain as much as 80 per cent road dust.

(8) Samples of potassium cyanid, said to be pure, contain as little as 28 per cent of potassium cyanid.

(9) Nineteen of 105 samples of pyrethrum (Persian insect powder) contained a poisonous substance which would be injurious to people using the above insecticide in their homes to kill flies.

(10) One sample of Paris green was found by one of the States that contained no Paris green, one was found that contained only 50 per cent Paris green, and 31 out of 650 samples contained less than 50 per cent total arsenious oxid.

(11) Examinations of all the common brands of lead arsenate paste obtainable on the open market were made by the Bureau of Chemistry. It was found that the moisture in these samples varied from less than 1 per cent to 61 per cent, the total arsenic oxid from 6 to 44 per cent, and the total lead oxid from 23 to 72.5 per cent. Six out of 50 samples showed more than 1 per cent soluble arsenic oxid, 3 showed more than 2 per cent soluble arsenic oxid, and 1 showed more than 5 per cent soluble arsenic oxid. The above figures show that samples of lead arsenate sold on the open market vary in composition to such an extent that it is impossible to tell the farmer how much of this insecticide to use to a certain quantity of water. If he used an average amount of 4 pounds of lead arsenate to 100 gallons of water, some of the above lead arsenates would not kill the insects and some would be injurious to the tree, because of the excessive amount of lead arsenate applied. At least 6 of the samples would scorch the foliage, because of an excessive amount of soluble arsenic oxid.

Respectfully,

H. W. WILEY, *Chief.*

The SECRETARY OF AGRICULTURE.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., February 4, 1910.

DEAR MR. MANN: Referring to the bill H. R. 3658, to prevent adulteration of insecticides and fungicides, I inclose herewith a memorandum from Dr. L. O. Howard, Entomologist, which is self-explanatory. I forwarded to you yesterday Doctor Wiley's views regarding this bill.

Very truly yours,

JAMES WILSON, *Secretary.*

Hon. JAMES R. MANN,
House of Representatives.

MEMORANDUM FOR THE SECRETARY

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF ENTOMOLOGY,
Washington, D. C., February 3, 1910.

Referring to your request of the 27th ultimo and accompanying letter from Hon. James R. Mann and copy of H. R. 3658, would advise that I am familiar with the provisions of this bill, and believe it to be a very good one. If enacted into law, it would be a great advantage to fruit growers, gardeners, and others [p. 5] as insuring honest insecticides and fungicides. It should also tend to harmonize the present laws in various States on this subject and would protect one State from another. The merits of the present bill have been carefully gone over between representatives of this bureau and the Bureau of Chemistry, and we heartily indorse it. A slightly modified bill, however, is now advocated by entomologists and agricultural chemists and also by manufacturers of insecticides which, in my opinion, is a desirable change over the bill as submitted—over H. R. 3658. A copy of this modified bill has already been submitted to you from the Bureau of Chemistry.

Respectfully,

L. O. HOWARD, *Chief of Bureau.*

[p. 6]

1.1a (3) CONGRESSIONAL RECORD, VOL. 45 (1910)

1.1a (3) (a) April 4: Debated, amended and passed Senate, pp. 4204–4206

ADULTERATED OR MISBRANDED INSECTICIDES, ETC.

The bill (S. 6131) for preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, lead arsenates, and other insecticides, and also fungicides, and for regulating traffic therein, and for other purposes, was considered as in Committee of the Whole.

Mr. HEYBURN. I should like to inquire how the bill comes from the Committee on Agriculture and Forestry. It is a pure-food bill.

Mr. BURTON. It is reported from the Committee on Agriculture and Forestry.

Mr. HEYBURN. It should have gone to the Committee on Manufactures.

Mr. BURTON. It relates to insecticides, Paris green, and other articles used for the destruction of pests that injure fruit. It was advocated and supported by the fruit interests and the agricultural interests of the country.

Mr. HEYBURN. Section 6 of the bill deals with "man or other animals, or households." It is very clear that the bill should have gone to the Committee on Manufactures. The mere fact that the articles are used by farmers in agricultural matters would not send a bill of that kind to the Committee on Agriculture and Forestry. It is not consistent with the pure-food law.

Mr. DOLLIVER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. HEYBURN. I do.

Mr. DOLLIVER. Similar bills have been pending here from year to year, having been reported year after year. They have always been referred to the Committee on Agriculture and Forestry, and never have taken the reference which has been suggested by the Senator from Idaho.

This bill comes to the Senate on the recommendation of the Department of Agriculture, as the result of a wide cooperation of agricultural interests, especially the fruit interests of the West and of the South, and is regarded by the fruit people as very essential to the successful progress of their industry. They have suffered, because the insecticides which are sold by the drug trade to them for the purpose of spraying their trees have been diluted and made according to bad formulas, so that they are ineffective. It is the judgment of the Department of Agriculture that unless some standardization of these insecticides can be made the fruit industry stands to suffer a very serious loss and damage every year.

I hope the Senator from Idaho will not make any objection either to the previous reference of the bill or to its present consideration. It is a most pressing matter.

Mr. HEYBURN. No one could be more thoroughly in sympathy with the purpose of the legislation than I, but it is clearly within the class of questions that have heretofore gone exclusively to the Committee on Manufactures. No such bill as this has gone to the Committee on Agriculture.

Mr. DOLLIVER. Bills relating to oleomargarine have always been considered by the Committee on Agriculture. Bills for preventing the adulteration of lard and of flour and all that variety of subjects have always been considered by the Committee on Agriculture and Forestry. While the pure-food bill had the jurisdiction—and I think fortunately the jurisdiction—of the committee of which the Senator from Idaho was chairman, it was an exception to all previous dealing and all subsequent dealing by Congress in detail with questions affecting the purity of articles used in commerce.

Mr. HEYBURN. The pure-food bill clearly established the jurisdiction of the Committee on Manufactures over this class of measures. This bill provides, in section 6, for the investigation and control of this article with reference to its uses by households and with reference to animals, and the classification here and the method are not consistent with the pure-food law. That is what I am talking about.

Mr. DOLLIVER. The use of insecticides, of course, has more application to plants and to animals than it has to anything else, as the Senator will perceive.

Mr. HEYBURN. The bill specifies men in section 6. I am anxious, Mr. President, that there should be uniformity. I have always considered that one of the strong features of the pure-food legislation was that it established a uniform practice and a uniform method, which are of the very greatest importance.

Now, here comes an innovation, providing a different method of determination and a different method of the exercise of jurisdiction. It might be equally good. I have not taken time as yet to consider that. I know the Senator from Iowa will agree with me that the more nearly uniform we can have, not only the law but the manner of its application and execution on any given class of subjects the better.

Mr. DOLLIVER. If the Senator will permit me, the pure-food law, I think, did not attempt to standardize articles of food.

Mr. HEYBURN. That was its great purpose.

Mr. DOLLIVER. The object of the pure-food law was to require a statement of the contents of an article so that people might judge of it. The difficulty with the acids from copper and various other insecticides was that they were impure; not that they were adulterated, but that their chemical properties were so adjusted as not to be effective. The Department of Agriculture recommended spraying with certain chemicals, and when people bought the chemicals, instead of helping the trees, they killed the leaves on them. Whole orchards of peaches in Georgia were destroyed, not because the insecticide was impure, not because it was adulterated, but because it had not the chemical adjustment of its constituents to kill the bugs without killing the trees. This proposition is the result of the studies of economic entomologists, who are organized for the purpose of studying this subject and who have determined what should be the proportion of these deadly mixtures in the insecticides in order to make them efficient. It is the object of the bill to require the people who are making these insecticides to sell them to the constituents of my honorable friend in such chemical proportions as will kill the insects without destroying the trees.

Mr. HEYBURN. The Senator from Iowa has struck the keynote of the proposition to which I object and to which my objection applies, and that is the standardizing of these articles. For many years Congress has been attempting to pass pure-food legislation upon standardization—if I may use such a word—and it has always resulted in failure. The House of Representatives reported the measure on the basis of standardization, but the Senate stood firm for the measure, based upon the facts of each case. It was conceded in conference—and I always regarded that as the prime element of the victory, if I may use such a term—of the Senate's policy in regard to it, and it has worked out splendidly. The establishment of the standard to-day may prove to-morrow to be a mistake. They have had to change their standards innumerable times. The Senate, after a thorough presentation of that question, realized that fact and stood firm for the principle upon which each case stands, upon the facts of that case. [P. 4204]

I think the Senator from Iowa [Mr. DOLLIVER] will agree with me, and I think he agreed with me at that time, that it was a dangerous rule to attempt to establish a standard of uniform application by a bureau, no matter how skilled or how learned, because experience had shown or the record had shown at that time that standards established this year had to be modified and changed next. What we wanted was stability in the law.

I know something of the use of Paris green. It is a question that ought not to be and can not be controlled through a bureau in Washington. Thousands and thousands—I was going to say hundreds of thousands—of individuals, fruit growers with patches of fruit trees from a quarter of an acre up to 100 or more acres, buy the ingredients and mix their spraying materials. Those of us who have had the opportunity of observation know that to be the fact. They are going, however, very far away from the Government, and they should have a right of action against a local dealer, or any other dealer, on their own responsibility in the event that they are deceived by being imposed upon by the dealer selling them something that is either harmful or useless. Now, you propose to circumscribe this jurisdiction very much. I should like to have this bill go to our committee, so that we could take it up and compare it with the rule that we laid down and legislated into the law. That would eliminate the standardizing features of this bill and put it on the basis of fact, so that the party might go into court to establish the facts and enforce the law.

Under a mistaken idea as to the provision of the pure-food law I have seen newspaper articles in great numbers and have received letters in great numbers based upon the supposition that standards were established. In them they had copies of the House bill, and they took it for granted that that was the law. I have had to correct that impression; I have had to correct some of the journals of most importance in this country dealing with that question. They would print some statement based upon the idea of the establishment of standards, and they would see a newspaper article that said that Doctor Wiley, a very eminent and respectable gentleman, the Secretary of Agriculture, and others had determined that this and that was so and constituted adulteration of the standard, but it does nothing of the kind. It does it for the purposes of inspection so far as the Government is concerned; but as to the establishment of the rights of the parties in controversy, the standards that they fix have no binding force whatever.

Only recently a court took an entirely different position and submitted the question to a jury as to whether or not the article presented with all the facts concerning it constituted a violation of the law. The jury found the facts; they found them in disregard of the standard, and they found them as they should have found them. Now, at this hour, when we have succeeded after many, many years of effort in establishing a proper basis by which to determine the purity of all articles entering into commerce, I think it should be uniform.

Mr. DOLLIVER. Mr. President, will the Senator permit me to interrupt him?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. HEYBURN. Certainly, I yield.

Mr. DOLLIVER. Mr. President, I think few men of our time have rendered a larger public service than has the Senator from Idaho [Mr. HEYBURN] in pressing, oftentimes with very poor moral support anywhere in the Senate or in the Government, that measure for the regulation of the sale of foods and drinks and medicines in the interstate commerce of the United States. The more I have studied the law the more certain my conviction has become that it will be regarded by students of the progress of society here as a veritable waymark of the moral advancement of the business of the United States; but the Senator is aware that the scheme of that law was simply to require these people, where articles entering into food were not harmful and poisonous, to put on the package what the article contained, so that people would know what they were buying, and in case the articles were deleterious to health it was altogether forbidden to put them in. No effort was made to standardize foods.

Mr. HEYBURN. Not in this body, but the House bill provided for that.

Mr. DOLLIVER. But the law makes no effort to standardize foods or drinks or medicines.

Mr. HEYBURN. No.

Mr. DOLLIVER. Now, then, the Senator will perceive that the theory of the pure-food law is not applicable here, for the reason that nobody complains that he does not know what he is buying. People are buying Paris green or arsenate of lead, or whatever insecticides they may desire, but in point of fact they are getting an article which is so proportioned chemically, so diluted, so complicated with strong acids, it may be, as either to be worthless or to be harmful, so that the bugs escape or else the bugs and the trees perish together. It is not the complaint of the people asking this legislation that there are poisonous things in this plant medicine; not at all; the mixture is itself a poison; but their complaint is that the chemists manufacturing arsenate of lead or other insecticides for use in spraying trees, or for use in the dipping of cattle, sheep, and other animals — their complaint is not so much that they are adulterating it, but that they do not know how to make it. Let me read from a report of the Secretary of Agriculture. In his annual report for 1905—and these bills have been pending before the Committee on Agriculture for many years, and have been reported more than once—the Secretary of Agriculture said:

> These investigations have shown that many of the insecticides offered to our farmers are of little value and that the price demanded and the value of the goods are not always proportionate. These studies have tended to protect the farmers of the country and secure for them a much better quality of insecticide for the money expended. (Yearbook, 1905, p. 61.)

In the very last report of the Bureau of Chemistry of the Department of Agriculture Doctor Wiley says:

> An investigation important to fruit growers and orchardists was that in regard to the composition and burning qualities of lead arsenate on the market for spraying purposes. Two of the samples examined proved to be composed entirely of white arsenic, a compound which would either kill the trees or seriously injure them. (Yearbook, 1908, p. 561.)

That is in the last report. So that our problem here is not to get pure insecticides; is not to get insecticides the contents of which are known to the people who buy them; it is not to get insecticides free from matter injurious to health, because their being fatal to pests is the very essence of the value of these chemicals; but it is to create such a standard in the preparation of articles sold for the protection of cattle and sheep and fruit trees as will effectually accomplish what the orchardist or the cattleman has in view when he dips the animal or sprays the trees. If we had nothing except the pure-food law to govern it, it would be absolutely worthless for this purpose.

Now, I call the attention of the Senator from Idaho to the fact that this bill in this exact form has been petitioned for by practically all the agricultural and horticultural societies of the country; by all the state colleges of agriculture; by the Purdue University agricultural experiment station, in Indiana; by various fruit exchanges; by the executive committee of the manufacturers, entomologists, and agricultural chemists; by the Michigan state board of agriculture, the Pennsylvania State College, the Massachusetts agricultural experiment station, the Missouri fruit experiment station, the Ohio agricultural experiment station, and many others; and those bodies are now pressing for this exact measure.

Mr. HEYBURN. Mr. President, I would sign my name to that list.

Mr. DOLLIVER. I trust my friend, then, on the mere question of parliamentary expediency will not delay the passage of the bill.

Mr. HEYBURN. Mr. President, of course I am not speaking under Rule VIII. I am not speaking to this bill. I am speaking to my suggestion that it be referred to the appropriate committee. I am thoroughly in favor of protecting the public against bogus articles—and they would be bogus articles in this case and not deleterious to health, because nobody eats them.

Mr. DOLLIVER. No; they are not bogus. These men are doing the best they can. The agricultural chemists themselves have asked us to set this standard.

Mr. HEYBURN. I am speaking of that class to whom the Senator refers, who impose an article on the market which is not what it is branded to be.

Mr. DOLLIVER. The manufacturing chemists impose no article on the market. They brand it exactly what it is, and they could state the contents of it and still not do any good, so far as this situation is concerned.

Mr. HEYBURN. Mr. President, I think the Senator will find that there are bogus articles on the market, and in many instances there are advertised a great many cure-alls, even for the worms on the trees, as there are for the human system. I would carry this legislation so far as to prevent the sale of something that was a pretense for a meritorious article. I am not claiming that this is a food and that it should be classed among the foods at all in any way. Of course, the Senator knows that. I am merely speaking for conformity to the rule that every bill of this kind, undertaking in any way to control the manufacture of articles, should go to the Committee on Manufactures. I think that must be obvious, because many things that go before that committee are used only, for instance, in the foundry or on the farm or in the mine, but they are manufactures. [p. 4205]

Mr. DOLLIVER. The custom of the Senate has been to send such bills to the Committee on Agriculture. That committee has reported this bill two or three times, I think.

Mr. HEYBURN. Mr. President, I think the Senate established a new rule when it sent the pure-food bill to the Committee on Manufactures; and I think that rule should be observed. The Committee on Agriculture is not short of business at all, and the Committee on Manufactures has now under consideration the paint bill. It has taken a good deal of testimony in regard to it, and the subcommittee will in a very few days report to the whole committee, and the whole committee to the Senate upon that measure. If we are going to have a Committee on Manufactures, let us send measures involving the manufacture of products to that committee, or else let us abolish it.

Mr. DOLLIVER. If the Senator will pardon me, I think he ought to be so thankful that the pure-food bill was not sent to the Committee on Interstate Commerce as to look with more charity and forbearance upon the reference of this bill in several Congresses to the Committee on Agriculture.

Mr. HEYBURN. Mr. President, I have a very vivid recollection of the pure-food bill, and I think I know why it was sent to the Committee on Manufactures. I have read its history, and I saw it displaced on this floor for the purpose of taking up a bill to reinstate a couple of bad boys over here at Annapolis. I learned some parliamentary procedure and law during the consideration of the pure-food bill. I found it necessary to acquire some of that knowledge in order to get that bill through.

This measure deals with exactly the same kind of a question, and while I am not hunting work and am not short of work, still I have some pride in the committee over which I have the honor to preside, and I naturally keep an eye over its jurisdiction. I do not know how this ever escaped me, or probably the Senator would have heard from me before.

Mr. DOLLIVER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. HEYBURN. Yes.

Mr. DOLLIVER. While the Senator is not short of work, I think I heard him express on this floor the other day a very great prejudice against the duplication of work; that is to say, the charging of two different people with the solemn responsibility for doing the same work.

Mr. HEYBURN. I think we all agree on that.

Mr. DOLLIVER. This work has been done with a good deal of care and a good deal of skill, and hearings have been taken at great expense to the Government, in which every interest was represented and all, including the manufacturing interests, were heard.

Mr. HEYBURN. I have no doubt of that.

Mr. DOLLIVER. Here is a bill of undoubted public service, with nobody opposed to it.

Mr. HEYBURN. Mr. President, I will not take the responsibility of delaying this measure further than to call the attention of the Senate to the fact that it went to the wrong committee. I am not anxious to take the bill from the Committee on Agriculture and Forestry. The only proper way to call it to the attention of the Senate was to move that it be referred to another committee. Mr. President, it may be that this is a very good bill. If it is not we can cure any defects in it or make any additions to it that the wisdom of the Senate may seem to dictate; but hereafter I shall insist that all measures of this kind go to the Committee on Manufactures or I shall insist that that committee has no function and leave it. That is the idea.

The PRESIDING OFFICER. The bill will be read by the Secretary.

The Secretary read the bill, which had been reported from the Committee on Agriculture and Forestry with amendments.

The first amendment was, in section 1, page 1, line 8, after the word "misdemeanor," to strike out "and for each offense shall, upon conviction thereof, be fined not to exceed $500, and for each subsequent offense and conviction thereof shall be fined not less than $500, or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court" and insert "and shall, upon conviction thereof, be fined not to exceed $200 for the first offense, and upon conviction for each subsequent offense be fined not to exceed $300, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court," so as to make the section read:

> That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any insecticide, Paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not to exceed $200 for the first offense, and upon conviction for each subsequent offense be fined not to exceed $300, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court.

The amendment was agreed to.

The next amendment was, in section 6, page 5, line 18, before the word "term," to strike out "The" and insert "That the," so as to read:

> That the term "insecticide" as used in this act, etc.

The amendment was agreed to.

The next amendment was, in section 7, on page 7, line 1, after the word "water," to strike out "can" and insert "may," so as to read:

> That extra water may be added to lead arsenate.

The amendment was agreed to.

The next amendment was, in the same section, on page 7, line 5, after the word "insecticides" to insert "or fungicides;" in line 6, after the word "arsenate," to strike out "or fungicides;" and in line 14, after the word "used," to strike out "as recommended by the manufacturer," so as to make the paragraph read:

> In the case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

The amendment was agreed to.

The bill was reported to the Senate as amended and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

[p. 4206]

1.1a (3) (b) April 18: Debated, amended and passed House, pp. 4917–4918; 4920

Mr. KNOWLAND. Mr. Speaker, this bill, the report upon which I submitted to the House from the Committee on Interstate and Foreign Commerce, is intended to prevent the transportation in interstate and foreign commerce of adulterated and misbranded insecticides and fungicides. On March 23, 1909, Mr. LOWDEN introduced a bill (H. R. 3658) relating to this subject-matter, which bill was referred by the Committee on Interstate and Foreign Commerce to the Department of Agriculture for information and suggestions. A few amendments were suggested by that department in the form and language of the bill, which amendments were incorporated in the bill (H. R. 20989), and that bill was taken up for consideration, and hearings at some length were given on the subject-matter. Senate bill 6131, which is reported, was referred to the committee on April 5, 1910, and is substantially the same as House bill 20989.

No one has appeared in opposition to the bill, and, so far as I am informed, no one is opposed to its passage.

Insecticides and fungicides are not classed as either foods or drugs, and consequently are not covered by the so-called pure food and drugs law, the language of which act this bill in form follows. The bill has the active and earnest indorsement of the Department of Agriculture, and especially the bureaus of Chemistry and Entomology in that department. It likewise has the indorsement of the leading manufacturers of insecticides and fungicides, of horticultural societies, and of persons interested in the growing of horticultural, agricultural, and market garden crops.

The use of insecticides and fungicides in the raising of certain classes of crops has become a necessity throughout the country. The value of crops in the United States last year aggregated nearly $8,000,000,000, and experts in the Department of Agriculture, after the most careful investigation, estimate that fully 10 per cent of our crops are lost through insect pests and another 10 per cent from fungous diseases. These figures convey the somewhat startling information that as a result of insects and fungous diseases one-fifth of our crops are lost, representing a money value, in round numbers, of over one billion and a half dollars.

It is authoritatively estimated that one-third of the insects and plant diseases can be successfully combated by the use of insecticides and fungicides. It developed in the hearings that between $20,000,000 and $25,000,000 were paid out annually by fruit growers and farmers for insecticides, which conveys some idea as to the importance of the bill. In a single State of the Union, California, the annual value of the fruit crop is over $60,000,000, and increasing at the rate of $2,000,000 yearly. Last year this State shipped over 32,500 carloads of citrus fruits alone, representing an investment of over $127,000,000.

The Department of Agriculture is engaged constantly in the study of the use and proper application of insecticides and fungicides and publishes formulas for their use, and these formulas depend for their value upon the strength and purity of the chemicals so used. Under existing conditions, with the strength and purity of the chemicals frequently varying, their use as insecticides and fungicides is often worse than useless. For proper application the chemicals must not be too strong or too weak. If too strong they will probably destroy or injure the vegetation, and if too weak they will not affect the insects or fungi. One instance was cited during the hearings where an orchard in Maryland containing 30,000 peach trees had been practically wiped out as a result of the owner spraying with a solution recommended for San José scale, by a certain firm, which contained ingredients highly injurious to the trees.

Insect powders sold for household use frequently contain poison. For instance, the statement was made to the committee by the chief of the insecticide and fungicide laboratory of the Bureau of Chemistry that of 105 samples of pyrethrum powder sold for the extermination of flies and other insects, 19 contained lead chromate, which is deleterious to human beings when breathed, these powders being promiscuously sprinkled about dwellings and endangering the health of occupants.

Indorsements of the bill have been filed with your committee by, among others, the following:

Executive committee, Manufacturers, Entomologists, and Agricultural Chemists, Durham, N. H.

Massachusetts Agricultural Experiment Station, Amherst, Mass.

Ohio Agricultural Experiment Station, Wooster, Ohio.

Nursery and Orchard Inspection, Michigan State Board of Agriculture, East Lansing, Mich.

Nursery and Orchard Division, Department of Agriculture, Columbus.

The Growers' Association of Minnesota, St. Paul, Minn.

Purdue University Agricultural Experiment Station, La Fayette, Ind.

New York State College of Agriculture at Cornell University, Ithaca, N. Y.

University of Idaho, College of Agriculture and Experiment Station, Moscow, Idaho.

Missouri State Fruit Experiment Station, Mountain Grove, Mo.

Pennsylvania Department of Agriculture, Harrisburg, Pa.

Florida Citrus Exchange.

Agricultural Experiment Station of the North Carolina College of Agriculture and Mechanic Arts, West Raleigh, N. C.

Minnesota State Horticultural Society, Faribault, Minn.

Iowa State Horticultural Society, Des Moines, Iowa.

Boston Market Gardeners' Association, Brighton, Mass.

Agricultural Experiment Station of the Rhode Island State College, Kingston, R. I.

The Ohio State University, Columbus, Ohio.

University of Minnesota Agricultural Experiment Station, St. Paul, Minn.

Ohio Department of Agriculture, Division of Farmers' Institutes, New Richmond, Ohio.

Georgia Fruit Exchange, Marshallville, Ga.

Maryland Agricultural College and Experiment Station, State Horticultural Department, College Park, Md.

National Grange (Patrons of Husbandry).

National Horticultural Congress.

American Apple Growers' Congress.

American Pomological Society.

American Association of Economic Entomologists.

Association of Official Agricultural Chemists.

Association of Horticultural Inspectors.

Western New York Horticultural Society.

Maryland Horticultural Society.

Missouri State Horticultural Society.

Ozark Fruit Growers' Association.

Georgia State Horticultural Society.
Maine Pomological Society.
New Hampshire Horticultural Society.
Vermont Horticultural Society.
Connecticut Pomological Society.
Illinois State Horticultural Society.
Peninsula Horticultural Society (Delaware and Maryland).
Florida Horticultural Society.
Indiana Horticultural Society.
Pennsylvania Horticultural Society.
Michigan Horticultural Society.
Missouri State Board of Agriculture.
Nebraska State Horticultural Society.
St. Paul Market Gardeners' Association.
New York State Fruit Growers' Association.
Illinois Commercial Apple Growers' Association.
W. R. Wilkinson, St. Louis, Mo.
H. Platt & Sons, Como, Mont.
Andrews Nursery, Fairbault, Minn.
E. E. Rudy, Rudy, Ark.
I. C. Hammond, Onset, Mass.
M. B. Greensfelder, Clayton, Mo.
W. F. Allen, Salisbury, Md.
C. Louis Allen, Aberdeen, S. Dak.
Orlando Harrison, Berlin, Md.
W. W. Farnsworth, Waterville, Ohio.
H. W. Miller, Paw Paw, W. Va.
Eugene Weston, Canon City, Colo.
L. C. Marston, Smithburg, Md.
H. W. Schmitkons, Lorain, Ohio.
I. F. Murph, Marshallville, Ga.
C. F. Dixon, Cleveland, Ohio.
H. A. Squires, Inza, Mo.

Also numerous state boards of agriculture, commissioners of agriculture, state and local granges, local fruit growers' associations, and farmers' clubs.

I am hopeful that the Members of the House will appreciate the merits of the pending bill by giving it their overwhelming approval.

Mr. LOWDEN. Mr. Speaker, this bill is intended to prevent the transportation in interstate and foreign commerce of adulterated or misbranded insecticides and fungicides. Our crops last year had a money value of almost $8,000,000,000. Experts in the Department of Agriculture estimated —and these estimates are checked up [p. 4917] by those thoroughly competent to do it — that fully 10 per cent of this $8,000,000,000 is lost through insect pests, and another 10 percent is lost through fungous diseases. In round numbers, the annual loss on the products of the soil would amount to something more than $1,500,000,000. The testimony at the hearing revealed the fact that one-third of this enormous loss could be combated profitably by the use of insecticides and fungicides. This would result in an annual saving to the agricultural interests of the country of $500,000,000. Prof. E. D. Sanderson, of the agricultural experiment station in New Hampshire, and president of the National Association of Entomologists, who has probably given more consideration to this subject than any other one man, is authority for this statement.

Arsenate of lead is probably used more extensively than anything else for spraying fruit trees. In the last report of the Department of Agriculture, the Bureau of Chemistry says:

> An investigation important to fruit growers and orchardists was that in regard to the composition and burning qualities of lead arsenate on the market for spraying purposes. Two of the samples examined proved to be composed entirely of white arsenic, a compound which would either kill the trees or seriously injure them. (Yearbook, 1908, p. 561.)

Doctor Smith, state entomologist of New Jersey, collected numerous samples of arsenate of lead which were for sale in that State, and he found in 1908 that goods which should have had from 12 to 15 per cent of arsenic, which is the killing ingredient, in them, ranged all the way from 4½ per cent up to 20 per cent of arsenic. In nearly all cases of insecticides the disparity is equally great, and in some cases much greater.

One of the most serious injuries sustained is in the use of Paris green, which contains soluble arsenic. If you use arsenic which will dissolve in water, it will burn the foliage. It was shown that in Maine out of four samples three were found with a percentage of soluble arsenic way beyond the safety point.

The same thing is true of fungicides. In the Northwest one of the most serious pests in regard to the grain is the smut of oats, and that is largely controlled by dipping the oats in a formaldehyde solution. Professor Bolley, of North Dakota, who is one of the best authorities on this subject, wrote Professor Sanderson a letter which he presented at the hearing, and which disclosed that there was a very serious difficulty in recommending this treatment, because the formaldehyde, which should be of a 40 per cent strength, ran all the way from 10 per cent to 40 per cent. It can be readily seen that if the recommendation of the scientists is based upon a 40 per cent solution and only a 10 per cent solution is used, the result will be wholly unsatisfactory. Therefore this bill seems a necessity, not only to prevent adulteration and fraud in insecticides and fungicides, but also to provide a standardization of these remedies.

Another fungicide which presents a good many difficulties is the Bordeaux mixtures; that is, the prepared Bordeaux mixtures that are manufactured and come in a paste form. A great many of these are not fraudulent in a strict sense, but they are manufactured in such a way and sold at such unreasonable prices in view of the value received from them that they are practically fraudulent. They are so low in strength in some instances that a man pays from four to eight times the value of the ingredients contained. If this bill becomes a law, it would compel the manufacturers of these fungicides to put on the label what is in the mixture, and then a prospective purchaser could judge for himself what it was worth.

Those who have read the very excellent report upon this bill submitted by the gentleman from California [Mr. KNOWLAND], together with the hearings before the committee, have doubtless noted that there are numerous instances of adulterated and misbranded insecticides and fungicides as serious as the few that I have mentioned above. No unprejudiced man can doubt, from all the evidence taken, that there is an imperative need for this law.

The Department of Agriculture, the experiment stations, and the agricultural colleges can not successfully meet their duties if the users of insecticides and fungicides have no means of knowing what the ingredients of the remedies prescribed by the entomologists and plant pathologists are. It is as though the physician in prescribing for his patients had no pharmacopœia which insured the standardization of the drugs.

The Department of Agriculture is spending a great deal of money in working out controls for these pests, and if, after they are all worked out, we have not the remedies to recommend to the people, of course we are at a great disadvantage. One of the unfortunate consequences of the present lack of system is that the farmer and gardener and orchardist, not getting results by following the prescriptions of the scientists, lose all confidence in scientific agriculture and thus greatly reduce the yield of the products of the farm.

We hear much these days about the increased cost of the products of the soil. This is not confined to America alone, but is true in a measure throughout the world. The experience of the older nations has shown that intensive agriculture alone can meet this condition. At the close of the Franco-Prussian war France was almost bankrupt. It is now stated by eminent statisticians that France is the richest country of Europe. All economists, so far as I know, attribute this largely to the intensive system of agriculture there maintained.

Many eminent authorities in our own country insist with much force that under our present methods of agriculture in a short time we will be unable to feed our own people. If we would avoid this appalling condition, we, too, must practice a more intensive agriculture. But intensive agriculture is impossible without pure and standardized insecticides and fungicides.

A startling development of the times is the constantly increasing percentage of our people who live in cities. One of the causes of this sinister tendency is that life is found more attractive by the majority in the cities than upon the farm. Intensive agriculture, involving as it does small farms, makes possible small communities scattered all over the land, where the near proximity of neighbors drives loneliness away and makes for a more attractive farm life. But the orchard and the truck garden and the small farm will not prosper without scientific agriculture.

We hear much of abandoned farms; it is said that though once productive they are now worn-out. I saw fields in Europe last autumn which were never more productive than now, and which furnished food for the legions of Rome in the early days of the Cæsars. It is a shameful confession for us to make that American lands, once fruitful, have been worn out in the comparatively brief time in which they have been cultivated. Such a confession is eloquent of the ignorance we have displayed in the past in the most ancient of all occupations. If the methods of farming which we have hitherto employed be followed for another half century, the Mississippi Valley, the greatest granary of the world, will also be dotted with abandoned farms. If this bill be passed, it will be a long step toward the conservation of the soil, the greatest of all conservation projects.

Mr. STEPHENS of Texas. Mr. Speaker, I hope that the gentleman from Illinois [Mr. MANN] will not insist upon his point of order, but withdraw it and permit my amendment to become a part of this bill. This bill is entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded Paris greens, and so forth, and for regulating traffic therein, and for other purposes." Mr. Speaker, if you will strike out the words "Paris green" and insert in lieu thereof "oleomargarine," you would see that the titles and provisions of the bills are almost identical. Therefore I think that the amendment is germane. Mr. Speaker, I desire to say a few words in favor of the repeal of the iniquitous oleomargarine law now on the statute books.

* * * * *

[p. 4918]

Mr. Chairman, this appeal, by one of the plain people, should be sufficient to convince this House and the country that this oleomargarine law should be repealed.

The bill as amended was ordered to a third reading, and was accordingly read the third time and passed.

On motion of Mr. MANN, a motion to reconsider the votes by which the various bills reported from the Committee on Interstate and Foreign Commerce were passed to-day was ordered to lie on the table.

[p. 4920]

1.1a (3) (c) April 19: Senate agrees to House amendments, p. 4959

[No Relevant Discussion on Pertinent Section]

1.1b FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

June 25, 1947, P.L. 80-104, 61 Stat. 163

[Chapter 125]

AN ACT

To regulate the marketing of economic poisons and devices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, and other forms of [p. 163] plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest.

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "weed" means any plant which grows where not wanted.

h. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

i. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

j. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

k. The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds or other pests.

l. The term "inert ingredient" means an ingredient which is not active.

m. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

n. The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

o. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

p. The term "Secretary" means the Secretary of Agriculture.

q. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act. [p. 164]

r. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

s. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

t. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

u. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase.

f. if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) If in the case of an insecticide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison.

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PROHIBITED ACTS

SEC. 3. (a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory, or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which has not been registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection

with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold; and

(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctiy colored or discolored, unless it has been so colored or discolored: *Provided*, That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

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b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

REGISTRATION

SEC. 4. a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the registrant shall file with the Secretary a statement including—

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the [p. 167] Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the registrant an opportunity to make the corrections necessary. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this Act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this Act.

d. Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

e. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6. a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act [p. 168] and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is, in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for

economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this Act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe regulations for the enforcement of section 10 of this Act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided,* That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

EXEMPTIONS

SEC. 7. a. The penalties provided for a violation of section 3a of this Act shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guar-

anty under the provisions of this Act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

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(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a (1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

b. Any person violating any provision other than section 3a (1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction for each subsequent offense be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided,* That an offense committed more than five years after the last previous conviction shall be considered a first offense: *And provided further,* That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this Act, he shall in each instance upon conviction for an offense concerning which he had been so warned, be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9. a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in this district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it has not been registered pursuant to the provisions of section 4 of this Act;

(c) if it fails to bear on its label the information required by this Act; or

(d) if it is a white powder economic poison and is not colored as required under this Act; or

(2) in the case of a device if it is misbranded.

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b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

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AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12. a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEPARABILITY

SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment: *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardship, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

REPEALS

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121–134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining [p. 172] any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.

Approved June 25, 1947.

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1.1b (1) HOUSE COMMITTEE ON AGRICULTURE

H.R. REP. No. 313, 80th Cong., 1st Sess. (1947)

RELATING TO THE MARKETING OF ECONOMIC POISONS AND DEVICES

APRIL 25, 1947.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOPE, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 1237]

The Committee on Agriculture, to whom was referred the bill (H. R. 1237) to regulate the marketing of economic poisons and devices, and for other purposes, having considered the same, report thereon with a recommendation that it do pass, with the following amendments:

Page 2, line 6, strike out the words "or weeds".

Page 6, line 11, strike out the word "instructions" and insert in lieu thereof the word "directions".

Page 7, line 2, strike out the semicolon and insert in lieu thereof a colon and add the following:

> *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase.

Page 8, line 4, insert after the phrase "deliver or offer to deliver" the following: "in the original unbroken package"; and insert a comma after the word "person".

Page 9, line 16, strike out the article "a".

Page 14, line 14, insert a new subsection e. as follows:

> e. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

Page 15, line 15, strike out the period after the word "Act" and insert the following: "and the determination and establishment of suitable names to be used in the ingredient statement."

Page 18, line 22, strike out the word "of" and insert in lieu thereof the word "for".

[p. 1]

Page 18, line 23, insert after the figures "$1,000" and before the colon the following: "or imprisoned for not more than one year, or both such fine and imprisonment".

Page 24, line 4, insert after the word "official" the following: "agricultural or other".

STATEMENT

The accompanying bill is intended to replace and expand the protection afforded by the present Insecticide Act of 1910. That law was enacted at a time when insecticides and fungicides were comparatively simple, consisting largely of paris green, pyrethrum, bordeaux mixture, and similar materials. Rodenticides and herbicides were not then marketed to any great extent.

Since 1910 great changes have occurred in the field of economic poisons, and the present law is now inadequate. New plant materials and synthetic chemicals developed through research by both private industry and the Government have greatly increased the number of economic poisons and the scope of their usefulness. An important example at the present time is DDT (dichlorodiphenyltrichloroethane), which is revolutionizing many phases of the insecticide industry. Herbicides are becoming increasingly important in the control and eradication of weeds as the result of the recent development of 2-4-dichloro-phenoxy-acetic acid and other synthetic materials.

This bill embraces, in addition to insecticides and fungicides, rodenticides, herbicides, devices and preparations intended to control other forms of pests which are not subject to the present Insecticide Act of 1910. Rodenticides are being marketed in large quantities and many of them are weak and ineffective and have tended to imperil various rodent-control programs. The importance of rodenticides can readily be appreciated when it is realized that the estimated damage by rats alone has amounted to some $200,000,000 annually.

Other important improvements and changes over the present law which would be provided by this bill are as follows:

(1) A provision requiring the registration of economic poisons prior to their sale or introduction into interstate or foreign commerce.

(2) The inclusion of provisions for protection of the public against poisoning by requiring prominently displayed poison warnings on the labels of highly toxic economic poisons.

(3) A provision requiring the coloring or discoloring of dangerous white powdered economic poisons to prevent their being mistaken for flour, sugar, salt, baking powder or other similar articles commonly used in the preparation of foodstuffs.

(4) A requirement that warning or caution statements be contained on the label of the economic poison to prevent injury to living man, other vertebrate animals, vegetation, and useful invertebrate animals.

(5) A provision requiring instructions for use to provide adequate protection for the public.

(6) A provision declaring economic poisons to be misbranded if they are injurious to man, vertebrate animals, or vegetation, except weeds, when properly used.

(7) A provision requiring information to be furnished with respect to the delivery, movement, or holding of economic poisons and devices.

One of the principal provisions of the bill is the one providing for the registration of economic poisons prior to their being marketed. [p. 2]

It is believed that this provision will provide additional protection for the public, assist manufacturers in complying with the provisions of the bill, and at the same time hold administrative costs to a minimum. Under the existing law, the Administrator has no means of ascertaining or knowing what economic poisons are being marketed, except by having a force of inspectors circulating through the country picking up samples here and there, wherever they may be found. Frequently, serious damage is suffered by agricultural producers and other users of economic poisons through the use of misbranded or adulterated economic poisons before the enforcement officials have any knowledge of the existence of such articles, or of their being offered to the public. Under this bill, any economic poison subject to the provisions thereof will be brought to the attention of the enforcement officials who will have an opportunity to become familiar with the formula, label, and claims made with respect to any such economic poison before it is offered to the public. It should be possible, therefore, in a great majority of instances, to prevent false and misleading claims, and to prevent worthless articles from being marketed, and to provide a means of obtaining speedy remedial action if any such articles are marketed. Thus, a great measure of protection can be accorded directly through the prevention of injury, rather than having to resort solely to the imposition of sanctions for violations after damage or injury has been done. Registration will also afford manufacturers an opportunity to eliminate many objectionable features from their labels prior to placing an economic poison on the market.

The bill in most of its provisions is in accord with and supplements the provisions of the proposed uniform State Insecticide, Fungicide, and Rodenticide Act which has been recommended for adoption by the Council of State Governments. It is believed that the enactment of this bill will greatly facilitate the coordination of work in this field among the States and with the Federal Government. It is highly desirable that laws governing economic poisons be as nearly uniform as possible consistent with the need for the protection of the public, so that manufacturers may have Nationwide distribution with a minimum of conflict between the labeling requirements of the various laws.

ANALYSIS OF THE BILL

Section 1: The act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

Section 2: This section contains definitions. Included under the term "economic poison" are preparations intended for use against insects, rodents, fungi, weeds, and other forms of plant or animal life or viruses which the Secretary of Agriculture may declare to be a pest. The term "device" means any instrument or contrivance intended for use against insects, rodents, or fungi, or other pests which may be designated as such by the Secretary but does not include equipment used for the application of economic poisons when sold separately therefrom.

The term "rodenticides" would include not only preparations for the control of animals ordinarily known as rodents, but also those suitable for the control of any vertebrate animal which the Secretary might declare to be a pest.

The term "ingredient statement" includes either a statement of the name and percentage of each active ingredient, together with [p. 3] the total percentage of the inert ingredients, or a statement of the name of each active ingredient, together with the name of each and the total percentage of the inert ingredients, except that when the product contains a material which is highly toxic to man the first alternative must be used.

The term "label" as used in the bill refers not only to the printed matter on the immediate container of the economic poison or device, but also on the outside container or wrapper of the retail package in which it may be packed.

The term "labeling" includes the label, as well as any printed matter accompanying the economic poison at any time. It also includes any written matter to which reference is made on the label, or literature accompanying the economic poison or device, except references to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

"Misbranding" as used in this bill includes essentially the same elements as are included under the present Insecticide Act of 1910, but in addition thereto an economic poison is misbranded if it bears any reference to registration under the act, if the label does not contain instructions for use which are necessary and adequate for the protection of the public, or if it does not bear an adequate warning or caution statement. Any reference to registration is required to be omitted from the label, because such reference might be construed as an endorsement of the article by the Department of Agriculture and the bill specifically provides that registration may not be construed as a defense for the commission of any offense prohibited by the act. Under the provisions of the bill an article is misbranded if the label does not bear an ingredient statement on that part of the retail package which is presented or displayed under customary conditions of purchase, but the Secretary is authorized to permit ingredient statements to appear prominently on some other part of the container if he deems it impracticable to have such statement placed on the part of the container which is presented or displayed under customary conditions of purchase.

An economic poison which causes injury to plants is now declared to be misbranded instead of adulterated, and this provision has been broadened to include injuries to living man or other vertebrate animals.

Section 3: The prohibited acts include the marketing of any economic poison which is not registered, or which contains any claim or claims made for it or any directions for its use which differ in substance from the representations made to the Secretary of Agriculture at the time of the product's registration, or if the product's composition differs from the composition represented for it to the Secretary of Agriculture at the time of registration, or the label of which does not bear the name and address of the manufacturer, registrant, or person for whom manufactured, the name, brand or trade-mark under which the article is sold and the net weight or measure of the content. In addition, labels on certain highly toxic substances must bear the skull and crossbones, the word "poison", and an antidote statement; and certain white powdered economic poisons are required to be colored or discolored to avoid their being [p. 4] mistaken for food products. Provisions similar to those of the present act prohibiting the shipment of adulterated or misbranded economic poisons are continued in effect. Devices must not be misbranded.

Detaching, altering, destroying or defacing labels in a manner that may defeat the purpose of the act, or the refusal to give certain information relative to interstate shipment of economic poisons, or the giving of false guaranties are prohibited. The disclosure of certain information furnished confidentially by a manufacturer, except to certain authorized persons, is also prohibited.

The committee amendment adding the words "in the original unbroken package" after the phrase "deliver or offer to deliver" on page 8, line 4, in section 3 (a) is intended to eliminate any question as to the constitutionality of that section. As the language read it would prohibit the resale of any economic poison which has been received in interstate commerce unless it is sold in the manufacturer's unbroken immediate container. The effect of the change will be to make unlawful the resale in the original unbroken package of an economic poison received in interstate commerce unless the provisions of the section are complied with, but to exclude from the requirements of such section resales of such economic poisons after repackaging.

Section 4: Registration is required for every economic poison. If the labeling or the article does not appear to comply with the provisions of the act, the person seeking to register the article is to be notified to that effect and given an opportunity to make necessary modifications. This will probably result in immediate correction in the majority of instances. However, if the registrant insists that no modifications are necessary, the article may be registered under protest, in which case the registrant will be subject to additional penalties if found guilty of violating provisions of the Act. In no event, however, is registration intended to give immunity for a violation, since registration is essentially a device to bring to the attention of the Secretary of Agriculture the economic poisons which are being marketed, their composition, and the claims made therefor. It is not intended that registration should relieve a manufacturer from the responsibility of seeing that his product is all that he represents it to be. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of 5 years following the registration thereof, or at the end of any 5-year period thereafter, unless the registrant prior to the expiration of each such 5-year period requests in accordance with regulations issued by the Secretary that the registration be continued in effect. This provision will have the effect of keeping registrations up to date.

Section 5: This section authorizes limited examination of books and records. It is similar to a provision contained in the Federal Food, Drug, and Cosmetic Act.

Section 6: This section authorizes the Secretary of Agriculture to make such rules and regulations as may be necessary for the effective administration and enforcement of the act, including the determination and establishment of suitable names to be used in ingredient statements. In addition thereto, it authorizes the Secretary, after opportunity for hearing, to include as pests any form of plant, animal life or virus which is injurious to plants, man, domestic animals, articles, or substances in addition to those specifically included under the definition of economic poison; to determine the substances which are highly toxic to man when contained in economic poisons; and to determine standards of coloring or discoloring for economic poisons. Other provisions of this section are similar to those contained in the Insecticide Act of 1910.

[p. 5]

Section 7: This section makes provision for exemption for any person who establishes a guaranty to the effect that the economic poison complies with the provisions of the act. It also exempts from penalties carriers who comply with provisions of the act, public officials in the performance of their official duties, and shippers of economic poisons for experimental use by or under the supervision of certain Federal or State agencies, or by others who obtain permits for such shipments.

Section 8: This section provides penalties for violations of the act.

Section 9: The provisions providing for seizures are substantially similar to the provisions of the Insecticide Act of 1910.

Section 10: This section relates to imports and is substantially the same as the provisions contained in the present law.

Section 11: This section authorizes the Secretary of Agriculture to delegate his authority under this bill to any employee of the Department of Agriculture.

Section 12: This section contains an authorization for appropriations and expenditures for the administration and enforcement of the act.

Section 13: This section authorizes the Secretary of Agriculture to cooperate with other Federal governmental agencies, and with official agricultural or other regulatory agencies of States or Territories, or other political subdivisions, in carrying out the provisions of the act, and in securing, as far as possible, uniformity of regulations among all such agencies.

Section 14: This section contains the usual separability clause.

Section 15: This section sets forth the date upon which the various sections become effective. The sections take effect at different times in order to permit the holding of hearings, the preparation of regulations, and such other administrative action as may be necessary. Under certain circumstances, the Secretary is authorized to exempt for a limited period particular economic poisons from the provisions of the act.

Section 16: This section provides for the repeal of the Insecticide Act of 1910, but contains a saving clause for the purpose of sustaining any proper suit, action or other proceeding with respect to violations of that act.

CONCLUSION

In conclusion it should be stated that the record before this committee demonstrates remarkable unanimity of opinion among farm organizations, industrial groups, entomologists, and Government officials, showing the need for legislation of this character. This bill has been considered by representatives of the Agricultural Insecticide and Fungicide Association; the National Association of Insecticide and Disinfectant Manufacturers, Inc.; the American Association of Economic Entomologists; the National Association of Commissioners, Secretaries, and Directors of Agriculture; the American Farm Bureau Federation; the National Grange; the National Council of Farmer Cooperatives; the International Apple Association; the Inter-State Manufacturers Association; the Pacific

[p. 6]

Insecticide Institute; the Farmers Education and Cooperative Union of America; the Department of Agriculture; the Department of the Interior, and by others. These organizations are strongly in favor of new legislation in this field and in the main are in accord with the bill as written.

In compliance with clause 2a of rule XIII of the House of Representatives, there is set forth below in black brackets the entire text of the Insecticide Act of 1910 (36 Stat. 331, 7 U.S.C. 121–134), which this bill would repeal:

* * * * * * *

[p. 7]

1.1b (2) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 199, 80th Cong., 1st Sess. (1947)

REGULATING THE MARKETING OF ECONOMIC POISONS AND DEVICES

MAY 26 (legislative day, APRIL 21), 1947.—Ordered to be printed

Mr. CAPPER, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany H.R. 1237]

The Committee on Agriculture and Forestry, to whom was referred the bill (H. R. 1237) to regulate the marketing of economic poisons and devices, and for other purposes, having considered same, report thereon with a recommendation that it do pass without amendment.

The report of the House of Representatives (H. Rept. No. 313) on the bill is attached hereto and made a part of said report.

[H Rept. No. 313, 80th Cong., 1st Sess.]

The Committee on Agriculture, to whom was referred the bill (H.R. 1237) to regulate the marketing of economic poisons and devices, and for other purposes, having considered the same, report thereon with a recommendation that it do pass, with the following amendments:

Page 2, line 6, strike out the words "or weeds".

Page 6, line 11, strike out the word "instructions" and insert in lieu thereof the word "directions".

Page 7, line 2, strike out the semicolon and insert in lieu thereof a colon and add the following: "*Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase."

Page 8, line 4, insert after the phrase "deliver or offer to deliver" the following: "in the original unbroken package"; and insert a comma after the word "person".

Page 9, line 16, strike out the article "a".

Page 14, line 14, insert a new subsection e, as follows:

"e. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect."

Page 15, line 15, strike out the period after the word "Act" and insert the following: "and the determination and establishment of suitable names to be used in the ingredient statement."

[p. 1]

Page 18, line 22, strike out the word "of" and insert in lieu thereof the word "for".

Page 18, line 23, insert after the figures "$1,000" and before the colon the following: "or imprisoned for not more than one year, or both such fine and imprisonment".

Page 24, line 4, insert after the word "official" the following: "agricultural or other".

STATEMENT

The accompanying bill is intended to replace and expand the protection afforded by the present Insecticide Act of 1910. That law was enacted at a time when insecticides and fungicides were comparatively simple, consisting largely of paris green, pyrethrum, bordeau mixture, and similar materials. Rodenticides and herbicides were not then marketed to any great extent.

Since 1910 great changes have occurred in the field of economic poisons, and the present law is now inadequate. New plant materials and synthetic chemicals developed through research by both private industry and the Government have greatly increased the number of economic poisons and the scope of their usefulness. An important example at the present time is DDT (dichlorodiphenyltrichloroethane), which is revolutionizing many phases of the insecticide industry. Herbicides are becoming increasingly important in the control and eradication of weeds as the result of the recent development of 2-4-dichloro-phenoxy-acetic acid and other synthetic materials.

This bill embraces, in addition to insecticides and fungicides, rodenticides, herbicides, devices and preparations intended to control other forms of pests which are not subject to the present Insecticide Act of 1910. Rodenticides are being marketed in large quantities and many of them are weak and ineffective and have tended to imperil various rodent-control programs. The importance of rodenticides can readily be appreciated when it is realized that the estimated damage by rats alone has amounted to some $200,000,000 annually.

Other important improvements and changes over the present law which would be provided by this bill are as follows:

(1) A provision requiring the registration of economic poisons prior to their sale or introduction into interstate or foreign commerce.

(2) The inclusion of provisions for protection of the public against poisoning by requiring prominently displayed poison warnings on the labels of highly toxic economic poisons.

(3) A provision requiring the coloring or discoloring of dangerous white powdered economic poisons to prevent their being mistaken for flour, sugar, salt, baking powder or other similar articles commonly used in the preparation of foodstuffs.

(4) A requirement that warning or caution statements be contained on the label of the economic poison to prevent injury to living man, other vertebrate animals, vegetation, and useful invertebrate animals.

(5) A provision requiring instructions for use to provide adequate protection for the public.

(6) A provision declaring economic poisons to be misbranded if they are injurious to man, vertebrate animals, or vegetation, except weeds, when properly used.

(7) A provision requiring information to be furnished with respect to the delivery, movement, or holding of economic poisons and devices.

One of the principal provisions of the bill is the one providing for the registration of economic poisons prior to their being marketed. It is believed that this provision will provide additional protection for the public, assist manufacturers in complying with the provisions of the bill, and at the same time hold administrative costs to a minimum. Under the existing law, the Administrator has no means of ascertaining or knowing what economic poisons are being marketed, except by having a force of inspectors circulating through the country picking up samples here and there, wherever they may be found. Frequently, serious damage is suffered by agricultural producers and other users of economic poisons through the use of misbranded or adulterated economic poisons before the enforcement officials have any knowledge of the existence of such articles, or of their being offered to the public. Under this bill, any economic poison subject to the provisions thereof will be brought to the attention of the enforcement officials who will have an opportunity to become familiar with the formula, label, and claims made with respect to any such economic poison before it is offered to the public. It should be possible, therefore, in a great majority of instances, to prevent false and misleading claims, [p. 2] and to prevent worthless articles from being marketed and to provide a means of obtaining speedy remedial action if any such articles are marketed. Thus, a great measure of protection can be accorded directly through the prevention of injury, rather than having to resort solely to the imposition of sanctions for violations after damage or injury has been done. Registration will also afford manufacturers an opportunity to eliminate many objectionable features from their labels prior to placing an economic poison on the market.

The bill in most of its provisions is in accord with and supplements the provisions of the proposed uniform State Insecticide, Fungicide, and Rodenticide Act which has been recommended for adoption by the Council of State Governments. It is believed that the enactment of this bill will greatly facilitate the coordination of work in this field among the States and with the Federal Government. It is highly desirable that laws governing economic poisons be as nearly uniform as possible consistent with the need for the protection of the public, so that manufacturers may have Nation-wide distribution with a minimum of conflict between the labeling requirements of the various laws.

ANALYSIS OF THE BILL

Section 1: The act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

Section 2: This section contains definitions. Included under the term "economic poison" are preparations intended for use against insects, rodents, fungi, weeds, and other forms of plant or animal life or viruses which the Secretary of Agriculture may declare to be a pest. The term "device" means any instrument or contrivance intended for use against insects, rodents, or fungi, or other pests which may be designated as such by the Secretary but does not include equipment used for the application of economic poisons when sold separately therefrom.

The term "rodenticides" would include not only preparations for the control of animals ordinarily known as rodents, but also those suitable for the control of any vertebrate animal which the Secretary might declare to be a pest.

The term "ingredient statement" includes either a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, or a statement of the name of each active ingredient, together with the name of each and the total percentage of the inert ingredients, except that when the product contains a material which is highly toxic to man the first alternative must be used.

The term "label" as used in the bill refers not only to the printed matter on the immediate container of the economic poison or device, but also on the outside container or wrapper of the retail package in which it may be packed.

The term "labeling" includes the label, as well as any printed matter accompanying the economic poison at any time. It also includes any written matter to which reference is made on the label, or literature accompanying the economic poison or device, except references to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

"Misbranding" as used in this bill includes essentially the same elements as are included under the present Insecticide Act of 1910, but in addition thereto an economic poison is misbranded if it bears any reference to registration under the act, if the label does not contain instructions for use which are necesssary and adequate for the protection of the public, or if it does not bear an adequate warning or caution statement. Any reference to registration is required to be omitted from the label, because such reference might be construed as an endorsement of the article by the Department of Agriculture and the bill specifically provides that registration may not be construed as a defense for the commission of any offense prohibited by the act. Under the provisions of the bill, an article is misbranded if the label does not bear an ingredient statement on that part of the retail package which is presented or displayed under customary conditions of purchase, but the Secretary is authorized to permit ingredient statements to appear prominently on some other part of the container if he deems it impracticable to have such statement placed on the part of the container which is presented or displayed under customary conditions of purchase.

An economic poison which causes injury to plants is now declared to be misbranded instead of adulterated, and this provision has been broadened to include injuries to living man or other vertebrate animals.

[p. 3]

Section 3: The prohibited acts include the marketing of any economic poison which is not registered, or which contains any claim or claims made for it or any directions for its use which differ in substance from the representations made to the Secretary of Agriculture at the time of the product's registration, or if the product's composition differs from the composition represented for it to the Secretary of Agriculture at the time of registration, or the label of which does not bear the name and address of the manufacturer, registrant, or person for whom manufactured, the name, brand, or trade-mark under which the article is sold and the net weight or measure of the content. In addition, labels on certain highly toxic substances must bear the skull and crossbones, the word "poison," and an antidote statement; and certain white powdered economic poisons are required to be colored or discolored to avoid their being mistaken for food products. Provisions similar to those of the present act prohibiting the shipment of adulterated or misbranded economic poisons are continued in effect. Devices must not be misbranded.

Detaching, altering, destroying, or defacing labels in a manner that may defeat the purpose of the act, or the refusal to give certain information relative to interstate shipment of economic poisons, or the giving of false guaranties are prohibited. The disclosure of certain information furnished confidentially by a manufacturer, except to certain authorized persons, is also prohibited.

The committee amendment adding the words "in the original unbroken package" after the phrase "deliver or offer to deliver" on page 8, line 4, in section 3 (a) is intended to eliminate any question as to the constitutionality of that section. As the language read it would prohibit the resale of any economic poison which has been received in interstate commerce unless it is sold in the manufacturer's unbroken immediate container. The effect of the change will be to make unlawful the resale in the original unbroken package of an economic poison received in interstate commerce unless the provisions of the section are complied with, but to exclude from the requirements of such section resales of such economic poisons after repackaging.

Section 4: Registration is required for every economic poison. If the labeling or the article does not appear to comply with the provisions of the act, the person seeking to register the article is to be notified to that effect and given an opportunity to make necessary modifications. This will probably result in immediate correction in the majority of instances. However, if the registrant insists that no modifications are necessary, the article may be registered under protest, in which case the registrant will be subject to additional penalties if found guilty of violating provisions of the Act. In no event, however, is registration intended to give immunity for a violation, since registration is essentially a device to bring to the attention of the Secretary of Agriculture the economic poisons which are being marketed, their composition, and the claims made therefor. It is not intended that registration should relieve a manufacturer from the responsibility of seeing that his product is all that he represents it to be. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of 5 years following the registration thereof, or at the end of any 5-year period thereafter, unless the registrant prior to the expiration of each such 5-year period requests in accordance with regulations issued by the Secretary that the registration be continued in effect. This provision will have the effect of keeping registrations up to date.

Section 5: This section authorizes limited examination of books and records. It is similar to a provision contained in the Federal Food, Drug, and Cosmetic Act.

Section 6: This section authorizes the Secretary of Agriculture to make such rules and regulations as may be necessary for the effective administration and enforcement of the act, including the determination and establishment of suitable names to be used in ingredient statements. In addition thereto, it authorizes the Secretary, after opportunity for hearing, to include as pests any form of plant, animal life or virus which is injurious to plants, man, domestic animals, articles, or substances in addition to those specifically included under the definition of economic poison; to determine the substances which are highly toxic to man when contained in economic poisons; and to determine standards of coloring or discoloring for economic poisons. Other provisions of this section are similar to those contained in the Insecticide Act of 1910.

Section 7: This section makes provision for exemption for any person who establishes a guaranty to the effect that the economic poison complies with the provisions of the act. It also exempts from penalties carriers who comply with provisions of the act, public officials in the performance of their official duties, and shippers of economic poisons for experimental use by or under the supervision of certain Federal or State agencies, or by others who obtain permits for such shipments.

[p. 4]

Section 8: This section provides penalties for violations of the act.

Section 9: The provisions providing for seizures are substantially similar to the provisions of the Insecticide Act of 1910.

Section 10: This section relates to imports and is substantially the same as the provisions contained in the present law.

Section 11: This section authorizes the Secretary of Agriculture to delegate his authority under this bill to any employee of the Department of Agriculture.

Section 12: This section contains an authorization for appropriations and expenditures for the administration and enforcement of the act.

Section 13: This section authorizes the Secretary of Agriculture to cooperate with other Federal governmental agencies, and with official agricultural or other regulatory agencies of States or Territories, or other political subdivisions, in carrying out the provisions of the act, and in securing, as far as possible, uniformity of regulations among all such agencies.

Section 14: This section contains the usual separability clause.

Section 15: This section sets forth the date upon which the various sections become effective. The sections take effect at different times in order to permit the holding of hearings, the preparation of regulations, and such other administrative action as may be necessary. Under certain circumstances, the Secretary is authorized to exempt for a limited period particular economic poisons from the provisions of the act.

Section 16: This section provides for the repeal of the Insecticide Act of 1910, but contains a saving clause for the purpose of sustaining any proper suit, action or other proceeding with respect to violations of that act.

CONCLUSION

In conclusion it should be stated that the record before this committee demonstrates remarkable unanimity of opinion among farm organizations, industrial groups, entomologists, and Government officials, showing the need for legislation of this character. This bill has been considered by representatives of the Agricultural Insecticide and Fungicide Association; the National Association of Insecticide and Disinfectant Manufacturers, Inc.; the American Association of Economic Entomologists; the National Association of Com-

missioners, Secretaries, and Directors of Agriculture; the American Farm Bureau Federation; the National Grange; the National Council of Farmer Cooperatives; the International Apple Association; the Inter-State Manufacturers Association; the Pacific Insecticide Institute; the Farmers Education and Cooperative Union of America; the Department of Agriculture; the Department of the Interior, and by others. These organizations are strongly in favor of new legislation in this field and in the main are in accord with the bill as written.

In compliance with clause 2a of rule XIII of the House of Representatives, there is set forth below in black brackets the entire text of the Insecticide Act of 1910 (36 Stat. 331, 7 U. S. C. 121–134), which this bill would repeal:

* * * * * * *

[p. 5]

1.1b (3) CONGRESSIONAL RECORD VOL. 93 (1947)

1.1b (3) (a) May 12: Passed House, pp. 5050–5055

MARKETING OF ECONOMIC POISONS AND DEVICES

The Clerk called the bill (H. R. 1237) to regulate the marketing of economic poisons and devices, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. COLE of New York. Mr. Speaker, reserving the right to object, when I first saw this bill it was my judgment that it was of such a nature and volume that it should be obliged to lie over for a while so that the Members could have an opportunity to study it and the public generally understand its provisions. The gentleman from Minnesota [Mr. ANDRESEN] assures me that the bill is very important, and although there are several other bills still on the Consent Calendar to be called, some of which are deserving of further explanation, I will not ask to have it passed over at this time if the gentleman from Minnesota can give us any assuring explanation.

Mr. AUGUST H. ANDRESEN. Mr. Speaker, this is an important bill. It is a highly technical bill, and for the protection of the public. The bill proposes to replace and expand the Insecticide Act of 1910; in other words, to bring the present insecticide law down to date so that the Federal Government can have some jurisdiction over many new insecticides that have been perfected during the past few years.

I will make a brief explanation of the bill. The Insecticide Act of 1910 was enacted at a time when insecticides and fungicides were comparatively simple, consisting largely of paris green, pyrethrum, bordeaux mixture, and similar materials. Rodenticides and herbicides were not then marketed to any great extent.

Since 1910 great changes have occurred in the field of economic poisons, and the present law is now inadequate. New plant materials and synthetic chemicals developed through research by both private industry and the Government have greatly increased the number of economic poisons and the scope of their usefulness. An important example at the present time is DDT (dichlorodiphenyltrichloroethane), which is revolutionizing many phases of the insecticide industry. Herbicides are becoming increasingly important in the control and eradication of weeds as the result of the recent development of 2-4-dichloro-phenoxyacetic acid and other synthetic materials.

This bill embraces, in addition to insecticides and fungicides, rodenticides, herbicides, devices and preparations intended to control other forms of pests which are not subject to the present Insecticide Act of 1910. Rodenticides are being marketed in large quantities and many of them are weak and ineffective and have tended to imperil various rodent-control programs. The importance of rodenticides can readily be appreciated when it is realized that the estimated damage by rats alone has amounted to some $200,000,000 annually.

Other important improvements and changes over the present law which would be provided by this bill are as follows:

First. A provision requiring the registration of economic poisons prior to their sale or introduction into interstate or foreign commerce.

Second. The inclusion of provisions for protection of the public against poisoning by requiring prominently displayed poison warnings on the labels of highly toxic economic poisons.

Third. A provision requiring the coloring or discoloring of dangerous white powdered economic poisons to prevent their being mistaken for flour, sugar, salt, baking powder, or other similar articles commonly used in the preparation of foodstuffs.

Fourth. A requirement that warning or caution statements be contained on the label of the economic poison to prevent injury to living man, other vertebrate animals, vegetation, and useful invertebrate animals.

Fifth. A provision requiring instructions for use to provide adequate protection for the public.

Sixth. A provision declaring economic poisons to be misbranded if they are injurious to man, vertebrate animals, or vegetation, except weeds, when properly used.

Seventh. A provision requiring information to be furnished with respect to the delivery, movement, or holding of economic poisons and devices.

Mr. KEEFE. Mr. Speaker, will the gentleman yield?

Mr. COLE of New York. I yield to the gentleman from Wisconsin.

Mr. KEEFE. Who administers this law?

Mr. AUGUST H. ANDRESEN. Under the act of 1910, the Insecticide Act is being administered by the Department of Agriculture, because it relates primarily to the use of these insecticides in the production of food. I may say to the gentleman that the insecticide industry, the Department of Agriculture, the distributors, and the organizations representing the producers of this country are all in accord on the need for this bill. Some of the manufacturers do not like the registration proposition, but it was deemed advisable that they should be required to register their product with the Department of Agriculture so that the public could be protected.

Mr. KEEFE. Why is it that the actual work is not handled by the Pure Food and Drug Administration?

Mr. AUGUST H. ANDRESEN. They deal with food, and this deals with insecticides, and under the act of 1910 the Department of Agriculture has handled it.

Mr. KEEFE. They are dealing with a large number of drugs. They handle the Cosmetic Act, for example.

Mr. AUGUST H. ANDRESEN. That is true.

[p. 5050]

Mr. KEEFE. I am just wondering why you should have two laboratories set up.

Mr. AUGUST H. ANDRESEN. This does not set up additional laboratories.

Mr. KEEFE. They deal with all sorts of insecticides; for example, in the spraying of fruit trees and all that sort of thing. Why should you have two organizations set up, one in the Department of Agriculture and one in the Federal Security Agency, to handle this proposition? Why cannot one do the job?

Mr. AUGUST H. ANDRESEN. Perhaps one agency can do the job, but this is already in the Department of Agriculture. This does not give the Department of Agriculture any new duties, except as are provided in the bill.

Mr. KEEFE. They are required under the terms of the act, are they not, to make examinations of insecticides and rodenticides and what not?

Mr. AUGUST H. ANDRESEN. They already have that laboratory.

Mr. KEEFE. That is exactly the point I am making. You have such a laboratory over in Agriculture. You have another great big laboratory doing the same type of work, exactly the same type of work, except a larger amount of work, in the Pure Food and Drug Administration. Now we are trying to simplify government and do away with overlapping bureaus and that sort of thing. I am asking what appears to me to be a perfectly decent and reasonable question: Why cannot this work of examination of new insecticides and rodenticides and what have you be done by the Pure Food and Drug Administration, that is already doing that in that field?

Mr. AUGUST H. ANDRESEN. They are not doing that, I may say to the gentleman.

Mr. FLANNAGAN. Mr. Speaker, will the gentleman yield?

Mr. COLE of New York. I yield to the gentleman from Virginia.

Mr. FLANNAGAN. This act at present is being administered by the Department of Agriculture. It primarily affects the farmers. It is to control the use of these insecticides, some of them very dangerous, that are being brought on the market or have been brought on the market during the past 2 or 3 years. It only amends the old act. It is not new legislation. It only brings the legislation up to date in order to give the farming interests of America protection against the use of these dangerous insecticides that are now being brought on the market.

Mr. KEEFE. If the gentleman will yield further, may I say I have no objection to the spirit and purpose of this act. I think it is a perfectly laudable one. But the Pure Food and Drug Administration is presently engaged in the business of examining insecticides for spray material for the treatment of fruit trees, for example, and that sort of thing. They have a great big laboratory established, and they have their agencies throughout the country doing that sort of work.

What I would like to know is: Why cannot this work of examining and passing upon the potency of proposed rodent control material and insecticide material be done by them?

Mr. FLANNAGAN. May I say to the gentleman that undoubtedly there is considerable merit in his statement that this activity should be consolidated, but that question has not been gone into. The only thing we are doing in this legislation is amending the present act. The present act provides that this work shall be done in the Department of Agriculture and it is left there. Hereafter if it is thought fit that these activities should be consolidated, then proper consideration should be given to that question.

Mr. AUGUST H. ANDRESEN. May I say to the gentleman from Wisconsin I feel a thorough investigation of the Department of Agriculture and other agencies of the Government should and would disclose matters that we could eliminate to avoid duplication. This may be one of them. But I think that should be the subject of separate legislation because of the vital need of this legislation to protect the growers of food so that they can know what they are buying when they purchase these insecticides.

Mr. KEEFE. The gentleman is a member of the Committee on Agriculture, as well as the distinguished gentleman from Virginia. [Mr. FLANNAGAN], who apparently are interested in this bill. I do not happen to be a member of any legislative committee, but I do happen to be a member of the Committee on Appropriations, which handles the appropriations for the

Pure Food and Drug Administration, and by reason of that fact, I am somewhat familiar with the operations of the Administration.

We are obliged to the people of America to economize in government and wherever the opportunity presents itself to wipe out duplicating agencies of government. Here is a flagrant case where in the Department of Agriculture there are a number of scientists who are set up for the purpose of examining insecticides and not permitting the misbranding of fungicides, rodenticides, and a few other things of that character, the exact type of work that is being done by the Pure Food and Drug Administration. Why not start in now and economize a little bit?

Mr. FLANNAGAN. I am not saying that the gentleman is not right—that there should be consolidation, but the defeat of this legislation will not bring about that consolidation. This legislation is for the purpose of bringing about an efficient administration with reference to these dangerous insecticides that are being sold to the farmers today so as to protect the people of America who are producing the food.

Mr. AUGUST H. ANDRESEN. I can assure the gentleman from Wisconsin that I am in thorough accord with his proposal to do away with duplication of activities on the part of many bureaus. This duplication should be eliminated, even though it might require the transfer of the enforcement of the insecticide law by the Pure Food and Drug Administration, or the transfer of the Pure Food and Drug over to the Department of Agriculture. Several hundred million dollars can be saved by eliminating duplications in Federal activities, and I will go along with the gentlemen and other Members of the House to accomplish this result.

In view of the emergency for the measure before the House, I hope that there will not be any objection at this time.

Mr. COLE of New York. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc.—

TITLE

SECTION 1. This act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this act—

a. The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest.

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi or weeds, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "weed" means any plant which grows where not wanted.

h. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

i. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

j. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

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(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is hightly toxic to man, determined as provided in section 6 of this act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

k. The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

l. The term "inert ingredient" means an ingredient which is not active.

m. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

n. The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

o. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

p. The term "Secretary" means the Secretary of Agriculture.

q. The term "registrant" means the person registering any economic poison pursuant to the provisions of this act.

r. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

s. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

t. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

u. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular:

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this act;

(c) if the labeling accompanying it does not contain instructions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) if in the case of an insecticide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison.

PROHIBITED ACTS

SEC. 3. a. It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any

State, Territory, or the District of Columbia from any other State, Territory, or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver to any other person, any of the following:

(1) Any economic poison which has not been registered pursuant to the provisions of section 4 of this act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold; and

(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this act, unless the label shall bear, in addition to any other matter required by this act—

(a) the skull and crossbones;

(b) the word "poison" prominently (in red) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as a standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided*, That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

b. Notwithstanding any other provision of this act, no article shall be deemed in violation of this act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this act.

REGISTRATION

SEC. 4. a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the registrant shall file with the Secretary a statement including—

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

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(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the corrections necessary. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this act.

d. Notwithstanding any other provision of this act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this act.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6. a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this act, including the collection and examination of samples of economic poisons and devices subject to this act. The Secretary is, in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe regulations for the enforcement of section 10 of this act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this act, and if it shall appear from any such examination that they fail to comply with the requirements of this act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary it appears that the provisions of this act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in this act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in action instituted under the authority of this act.

EXEMPTIONS

SEC. 7. a. The penalties provided for a violation of section 3a of this act shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this act, designating this act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a (1) of this act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

b. Any person violating any provision other than section 3a (1) of this act shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction of each subsequent offense be fined not more than $1,000: *Provided*, That an offense committed more than 5 years after the last previous conviction shall be considered a first offense: *And provided further*, That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this act, he shall in each instance upon conviction for an offense concerning which he had been so warned, be fined not more than $1,000 or imprisoned for not more than 1 year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this act, he shall be fined not more than $10,000 or imprisoned for not more than 3 years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9. a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it has not been registered pursuant to the provisions of section 4 of this act;

(c) if it fails to bear on its label the information required by this act; or

(d) if it is a white powder economic poison and is not colored as required under this act; or

(2) in the case of a device if it is misbranded.

b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

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c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated or misbranded or otherwise violates the prohibitions set forth in this act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within 3 months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12. a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this act. In order to carry out the provisions of this act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such act are authorized to be made available.

b. The Secretary is authorized from the funds appropriated for this act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this act, and in securing uniformity of regulations.

SEPARABILITY

SEC. 14. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15. All provisions of this act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports," shall take effect upon enactment, and sections 3, 8, 9, and 10 of this act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, 6 months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, 1 year after enactment: *Provided*, That the Secretary, upon application may at any time within 1 year after sections 3, 8, 9, and 10 of this act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardship, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

REPEALS

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U. S. C. 121-134), is hereby repealed 1 year after the date of the enactment of this act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.

With the following committee amendments:

Page 2, line 6, strike out the words "or weeds."

Page 6, line 11, strike out the word "instructions" and insert in lieu thereof the word "directions."

Page 7, line 2, strike out the semicolon and insert in lieu thereof a colon and add the following:

"*Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase."

Page 8, line 4, insert after the phrase "deliver or offer to deliver" the following: "in the original unbroken package"; and insert a comma after the word "person."

Page 9, line 16, strike out the article "a."

Page 14, line 14, insert a new subsection e, as follows:

"e. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of 5 years following the registration of such economic poison or at the end of any 5-year period thereafter, unless the registrant, prior to the expiration of each such 5-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect."

Page 15, line 15, strike out the period after the word "act" and insert the following: "and the determination and establishment of suitable names to be used in the ingredient statement."

Page 18, line 22, strike out the word "of" and insert in lieu thereof the word "for."

Page 18, line 23, insert after the figures "$1,000" and before the colon the following: "or imprisoned for not more than 1 year, or both such fine and imprisonment."

Page 24, line 4, insert after the word "official" the following: "agricultural or other."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PROPOSED SITE OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Clerk called the bill (H. R. 3029) providing for the acquisition of a site and for preparation of plans and specifications for a courthouse to accommodate the United States Court of Appeals for the District of Columbia and the District Court of the United States for the District of Columbia.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. COLE of New York. Mr. Speaker, reserving the right to object, this bill, as I understand it, is designed primarily to authorize the expenditure of $400,000 to prepare architect's plans for a new courthouse. But in the bill a commitment is made to the effect that the price of the site on which the courthouse is to be erected will be $2,400,000. I should like to inquire of the gentleman from Michigan, the chairman of the Committee on Public Works, the basis for that appraisal.

Mr. DONDERO. Mr. Speaker, if the gentleman will yield, the question asked by the gentleman from New York is a fair one. The site involved for the erection of a new courthouse for the United States District Court of Appeals is located on Independence Avenue at Marshall Place.

The District of Columbia acquired that site nearly 20 years ago. The price that was paid for it was approximately $1,800,000. The Commissioners of the District of Columbia had an appraisal made, and Mr. Robert Reynolds, United States Director of Public Buildings and Grounds, also appraised the property on behalf of the United States Government. The appraisals were so nearly alike that there was no dispute about it, and that price was fixed. Ninety-nine and one-half percent of the title to the site is in the District of Columbia. This whole project is on a 50-50 basis. The District of Columbia pays half and the United States Government the other half. I may say that the present courthouse now occupied by the United States District Court of Appeals was erected in 1823. Those on the Public Works Committee who visited the court in action, and especially those members who are lawyers and practice law themselves, saw a great need for a new courthouse in the District of Columbia.

The price about which the gentleman inquires, $2,400,000, while it is [p. 5054] somewhat in excess of the amount paid by the District of Columbia, nevertheless we must realize they have held it nearly 20 years for the purpose for which we now desire it, a courthouse site. Inasmuch as the representatives of the District of Columbia and of the United States believe that is a fair price, it does not seem that the amount is excessive or open to objection.

Mr. COLE of New York. Would the gentleman advise us the date on which this appraisal was made by Mr. Reynolds?

Mr. DONDERO. Within the last year.

Mr. COLE of New York. And the gentleman is satisfied that this parcel of ground, which is now and for some years past has been used as a parking space, is reasonably worth $2,400,000?

Mr. DONDERO. I am satisfied and no member of the committee has found himself in disagreement with it. I believe it is a fair price.

Mr. COLE of New York. I withdraw my reservation of objection.

Mr. CUNNINGHAM. Mr. Speaker, further reserving the right to object, that additional $600,000, since the District of Columbia pays half of the cost, one-half of that would be paid anyway by the District of Columbia. So it is only an increase of $300,000 over the appraisal agreed upon and that covers that period of 20 years. Is that correct?

Mr. DONDERO. That is correct.

Mr. CUNNINGHAM. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Architect of the Capitol is hereby authorized and directed to prepare drawings and specifications, and do all work incidental thereto, for a building (including equipment, approaches, architectural landscape treatment of the grounds and connections with public utilities, and the Federal heating system) for the use of the United States Court of Appeals for the District of Columbia and the District Court of the United States for the District of Columbia, to be located on that part of reservation 10 which is bounded by Constitution Avenue on the south, C Street on the north, John Marshall Place on the west, and Third Street on the east, containing 245,266 square feet, title to which is in the District of Columbia with the exception of two pieces of land having a combined total area of 1,238 square feet, title to which said two pieces of land is in the United States.

SEC. 2. (a) The plans for the building shall be prepared under the direction of, and shall be approved by, a committee of six members to be composed of the chief justice of the United States Court of Appeals for the District of Columbia, the chief justice of the District Court of the United States for the District of Columbia, an associate justice of the District Court of the United States for the District of Columbia to be designated by the chief justice of the United States Court of Appeals for the District of Columbia, a member of the Board of Commissioners of the District of Columbia to be designated by said Board, the Commissioner of Public Buildings, and the Architect of the Capitol.

(b) The said committee shall estimate the cost of such building and report its findings to the Congress.

SEC. 3. The exact location of the building on the site shall be approved by the National Capital Park and Planning Commission, and the design shall be approved by the Commission of Fine Arts.

SEC. 4. The Commissioners of the District of Columbia are hereby authorized and directed to convey to the United States title to that part of reservation 10 which is owned by the District of Columbia within the area described in section 1 of this title, excepting a strip 5 feet wide immediately adjacent to the south line of C Street and running parallel with said south line of C Street from Third Street to John Marshall Place, said strip to be reserved for the widening of C Street: *Provided*, That the said Commissioners are hereby authorized to continue to lease such land for parking purposes and to receive and use for expenses of the District of Columbia any income derived therefrom, until such time as the use of the land is required by the Federal Government for the new court building. The compensation for the site, which is herein fixed at $2,420,000, shall constitute a credit to the District of Columbia for its share of the cost of the entire project as hereafter established by the Congress.

SEC. 5. The Architect of the Capitol is hereby authorized to employ the necessary personal and other services, to enter into the necessary contracts, and to make such other expenditures as may be necessary to carry out the provisions of sections 1 and 2 of this title, and there is hereby authorized to be appropriated a sum not in excess of $400,000 for such purposes, which shall include all architectural fees.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

[p. 5055]

1.1b (3) (b) June 16: Passed Senate, pp. 7007–7008

MARKETING OF ECONOMIC POISONS AND DEVICES

The Senate proceeded to consider the bill (H. R. 1237) to regulate the marketing of economic poisons and devices, and for other purposes.

Mr. REVERCOMB. Mr. President, may we have an explanation of the bill?

Mr. ELLENDER. Mr. President, this bill was considered by, and received the unanimous approval, of the Committee on Agriculture and Forestry. The bill passed the House of Representatives without objection and with little discussion. The bill is intended to replace and expand the protection afforded by the present Insecticide Act of 1910. Such a bill is necessary because of the vast progress made in recent years pertaining to the development of many new insecticide poisons. The measure protects those who use such poisons, and also the public in general, by compelling those who handle them for sale and distribution to follow certain rules and regulations.

If the Senator will look at page 2 of the report, he will see the reasons advanced for broadening the act of 1910.

It is primarily due to the fact that today many more poisons are used by farmers and others. When the present law on the subject was enacted insecticides and fungicides were comparatively simple, consisting largely of paris green, pyrethrum, bordeaux mixture, and similar materials. We have added many new poisons, including DDT which is one of the more important additions. As I have just stated one of the main considerations for the enactment of the measure is to insure that poisons shall be labeled so as to show what they are and how they should be used. In recent months the use of some of the new poisons has caused a good deal of damage to livestock as well as growing crops in the locality where used. Permit me to say that other important improvements over the present laws are as follows:

1. A provision requiring the registration of economic poisons prior to their sale or introduction into interstate or foreign commerce.

2. The inclusion of provisions for protection of the public against poisoning by requiring prominently displayed poison warnings on the labels of highly toxic economic poisons.

3. A provision requiring the coloring or discoloring of dangerous white powdered economic poisons to prevent their being mistaken for flour, sugar, salt, baking powder, or other similar articles commonly used in the preparation of foodstuffs.

4. A requirement that warning or caution statements be contained on the label of the economic poison to prevent injury to living man,

[p. 7007]

other vertebrate animals, vegetation, and useful invertebrate animals.

5. A provision requiring instructions for use to provide adequate protection for the public.

6. A provision declaring economic poisons to be misbranded if they are injurious to man, vertebrate animals, or vegetation, except weeds, when properly used.

7. A provision requiring information to be furnished with respect to the delivery, movement, or holding of economic poisons and devices.

One of the principal provisions of the bill is the one providing for the registration of economic poisons prior to their being marketed. It is believed that this provision will provide additional protection for the public, assist manufacturers in complying with the provisions of the bill, and at the same time hold administrative costs to a minimum. Under the existing law, the Administrator has no means of ascertaining or knowing what economic poisons are being marketed, except by having a force of inspectors circulating through the country picking up samples here and there, wherever they may be found. Frequently, serious damage is suffered by agricultural producers and other users of economic poisons through the use of misbranded or adulterated economic poisons before the enforcement officials have any knowledge of the existence of such articles, or of their being offered to the public. Under this bill, any economic poison subject to the provisions thereof will be brought to the attention of the enforcement officials who will have an opportunity to become familiar with the formula, label, and claims made with respect to any such economic poison before it is offered to the public. It should be possible, therefore, in a great majority of instances, to prevent false and misleading claims, and to prevent worthless articles from being marketed, and to provide a means of obtaining speedy remedial action if any such articles are marketed. Thus, a great measure of protection can be accorded directly through the prevention of injury rather than having to resort solely to the imposition of sanctions for violations after damage or injury has been done. Registration will also afford manufacturers an opportunity to eliminate many objectionable features from their labels prior to placing an economic poison on the market.

The bill in most of its provisions is in accord with and supplements the provisions of the proposed uniform State Insecticide, Fungicide, and Dodenticide Act which has been recommended for adoption by the Council of State Governments. It is believed that the enactment of this bill will greatly facilitate the coordination of work in this field among the States and with the Federal Government. It is highly desirable that laws governing economic poisons be as nearly uniform as possible consistent with the need for the protection of the public, so that manufacturers may have Nation-wide distribution with a minimum of conflict between the labeling requirements of the various laws.

Mr. REVERCOMB. Mr. President, since the bill deals with the use of poisons for agricultural purposes, I have no objection.

The PRESIDENT pro tempore. The question is on the third reading of the bill.

The bill was ordered to a third reading, read the third time, and passed.

CONSTRUCTION OF RURAL POST ROADS

The bill (H. R. 1874) to amend the act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes," was considered, ordered to a third reading, read the third time, and passed.

[p. 7008]

1.1c REORGANIZATION PLAN NO. 2 OF 1953

67 Stat. 633

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 25, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.

DEPARTMENT OF AGRICULTURE

SEC. 1. *Transfer of functions to the Secretary.*—(a) Subject to the exceptions specified in subsection (b) of this section, there are hereby transferred to the Secretary of Agriculture all functions not now vested in him of all other officers, and of all agencies and employees, of the Department of Agriculture.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (5 U.S.C. 1001 et seq.) in hearing examiners employed by the Department of Agriculture nor to the functions of (1) the corporations of the Department of Agriculture, (2) the boards of directors and officers of such corporations, (3) the Advisory Board of the Commodity Credit Corporation, or (4) the Farm Credit Administration or any agency, officer, or entity of, under, or subject to the supervision of the said Administration.

SEC. 2. *Assistant Secretaries of Agriculture.*—Two additional Assistant Secretaries of Agriculture shall be appointed by the President, by and with the advice and consent of the Senate. Each such assistant secretary shall perform such functions as the Secretary of Agriculture shall, from time to time, prescribe and each shall receive compensation at the rate prescribed by law for Assistant Secretaries of executive departments.

SEC. 3. *Administrative Assistant Secretary.*—An Administrative Assistant Secretary of Agriculture shall be appointed, with the approval of the President, by the Secretary of Agriculture under the classified civil service, and shall perform such functions as the Secretary of Agriculture shall, from time to time, prescribe. The provisions of the item numbered (1) of the third proviso under the heading "General Provisions" appearing in Chapter XI of the Third Supplemental Appropriation Act, 1952, approved June 5, 1952, 66 Stat. 121, are hereby made applicable to the position of Administrative Assistant Secretary of Agriculture.

SEC. 4. *Delegation of functions.*—(a) The Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

(b) To the extent that the carrying out of subsection (a) of this section involves the assignment of major functions or major groups of functions to major constituent organizational units of the Department of Agriculture, now or hereafter existing, or to the heads or other officers thereof, and to the extent deemed practicable by the Secretary, he shall give appropriate advance public notice of delegations of functions proposed to be made by him [p. 633] and shall afford appropriate opportunity for interested persons and groups to place before the Department of Agriculture their views with respect to such proposed delegations.

(c) In carrying out subsection (a) of this section the Secretary shall seek to simplify and make efficient the operation of the

Department of Agriculture, to place the administration of farm programs close to the state and local levels, and to adapt the administration of the programs of the Department to regional, state, and local conditions.

SEC. 5. *Incidental transfers.*—The Secretary of Agriculture may from time to time effect such transfers within the Department of Agriculture of any of the records, property and personnel affected by this reorganization plan and such transfers of unexpended balances (available or to be made available for use in connection with any affected function or agency) of appropriations, allocations, and other funds of such Department, as he deems necessary to carry out the provisions of this reorganization plan; but such unexpended balances so transferred shall be used only for the purposes for which such appropriation was originally made.

[p. 634]

1.1d NEMATOCIDE, PLANT REGULATOR, DEFOLIANT AND DESICCANT AMENDMENTS OF 1959

August 7, 1959, P. L. 86–139, 73 Stat. 286

AN ACT

To amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959".

SEC. 2. (A) The Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163; 7 U.S.C. 135–135k) is amended so that sections 2a and 2b read as follows:

"a. The term 'economic poison' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

"b. The term 'device' means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom."

(B) Section 2 of such Act is further amended by redesignating subsections g through u to be subsections l through z respectively; and by adding new subsections g, h, i, j, and k, and amending new subsections p and z, to read respectively as follows:

"g. The term 'nematocide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

"h. The term 'plant regulator' means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"i. The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"j. The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"k. The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

"p. The term 'active ingredient' means—

"(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

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"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"z. The term 'misbranded' shall apply—

"(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(2) to any economic poison—

"(a) if it is an imitation of or is offered for sale under the name of another economic poison;

"(b) if its labeling bears any reference to registration under this Act;

"(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

"(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

"(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

"(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

"(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

"(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations."

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) that date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which

necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs.

Approved August 7, 1959.

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1.1d (1) HOUSE COMMITTEE ON AGRICULTURE

H. R. REP. No. 552, 86th Cong., 1st Sess. (1959)

AMENDING THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT TO INCLUDE NEMATOCIDES, PLANT REGULATORS, DEFOLIANTS, AND DESICCANTS

JUNE 16, 1959.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 6436]

The Committee on Agriculture, to whom was referred the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out entire section 3(b), page 7, line 21, through page 8, line 14, and substitute therefor the following:

> (b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities) shall apply until—
>
> (1) March 5, 1960 or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a

finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective,

whichever date first occurs.

PURPOSE OF THE BILL

The purpose of this bill is to provide for the proper regulation of nematocides, plant regulators, defoliants, and desiccants which have become of great importance to agriculture and related interests during the last 10 years.

Nematocides are used to control very small worms known as nematodes or eelworms, many of which attack plants. Defoliants are used to make leaves drop from plants, generally to permit mechanical harvesting. Desiccants are used to hasten the drying of plant tissues, usually to facilitate harvesting or improve crop quality. Plant regulators are used to modify the normal growth processes of plants or the produce thereof, for such purposes as to prevent fruit drop, to hasten maturity, and to delay sprouting in storage. The products are defined in more precise technical terms in the bill.

The effect of the bill is to subject the aforementioned products to the same regulatory controls and requirements under the Federal Insecticide, Fungicide, and Rodenticide Act as are now applicable to insecticides, fungicides, weed killers, and rodenticides. By placing these products under that act, the bill would also effectively, although indirectly, place them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 518, 83d Cong.), insofar as residues in or on raw agricultural commodities may be involved, because of the interrelationship of the two acts.

The bill would accomplish its objective of placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act by expanding the present definition of "economic poison" in that act to include these products. It would also amend certain other definitions in the act and add some additional ones, as necessitated by the broader coverage. However, it does not change the substantive provisions of the act as they relate to presently regulated products.

The bill would become effective upon enactment and thus permit the Department of Agriculture to begin the registration of the newly regulated products, as required by the Federal Insecticide, Fungicide, and Rodenticide Act, and also permit the Department of Health, Education, and Welfare to establish tolerances for them on raw agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act. However, in order to permit an orderly transition period for both the Government and the industry, provision is made to defer the applicability of certain sections of those two acts to some of these products until March 5, 1960 or such later date or dates, not beyond March 5, 1961, as the Secretary of Agriculture and the Secretary of Health, Education, and Welfare, respectively, may prescribe on the basis of a determination that such postponement is necessary to avoid hardships and will not be unduly detrimental to the public interest. These dates have been specified so as to have the fully effective dates under this bill coincide with those under the food additives amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 85–929). Since [p. 2] some products which would be affected by this bill are also subject to the food additives amendment, it has appeared desirable that the two become fully effective at the same time.

BACKGROUND

The original Federal Insecticide Act was passed in 1910. The present Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947 to reflect the then current situation as regards pest control chemicals and agricultural practices. It regulates the labeling and marketing of insecticides, fungicides, herbicides, and rodenticides which are collectively referred to in the act as "economic poisons," and commonly known as pesticides.

Since 1947, several new types of agricultural chemicals have been developed and have found widespread commercial application. These new products are generally referred to and are designated in this bill as nematocides, defoliants, desiccants, and plant regulators. While these products are now regulated under some State laws which correspond to the Federal Insecticide, Fungicide, and Rodenticide Act, they are not regulated under the latter statute. Because of the importance of these products to the agricultural interests of this Nation, various organizations and groups have expressed the opinion that they should be subject to similar regulation at the Federal level.

Experience has shown that regulation of agricultural pest control chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act has been effective and beneficial to farmers and growers. Accordingly, it appears desirable that the same type of regulation, under the same act, should be applied to these more recently developed products.

HEARING

A hearing was held by the full committee on this bill. At the hearing, representatives from the Department of Agriculture, land-grant colleges, the Association of American Pesticide Control Officials, Inc., farm and grower organizations, and the agricultural chemical industry appeared and testified unanimously in favor of the bill and urged its enactment.

COMMITTEE AMENDMENT

In addition to placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act, the bill also makes residues of such chemicals in or on raw agricultural commodities subject to the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act. The bill, as introduced, provided that that amendment would not be applicable to some of the chemicals for a period of time to be specified by the Secretary of Health, Education, and Welfare, but not extending beyond March 5, 1961. The committee amendment, adopted upon the recommendation of the Department of Health, Education, and Welfare, provides that during this transitional period, the adulteration provisions of the earlier law shall be applicable for the purpose of protecting the public health.

[p. 3]

DEPARTMENTAL REPORTS

Reports recommending enactment of H.R. 6436 were received from both the Department of Agriculture and the Department of Health, Education and Welfare. In connection with the estimates of cost in the report of the Department of Agriculture, it is to be noted that many of the products are now scheduled for regulation by the Food and Drug Administration under the provisions of the food additive amendment, so that transfer of their regulation to the Department of Agriculture under terms of this bill will be in part a transfer of administrative cost. Thus the estimates of administrative cost made by the Department of Agriculture are not all new or additional costs.

The amendment recommended by the Department of Health, Education, and Welfare was adopted by the committee.

MAY 21, 1959.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR CONGRESSMAN COOLEY: This is in reply to your request of April 16 for a report on H. R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

This Department supports the purposes of the bill and recommends its enactment.

The bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to bring within the provisions of that law four new classes of chemicals. These classes are nematocides, plant regulators, defoliants, and desiccants.

Our reasons for making the above recommendation are as follows:

(1) The new classes of chemicals which would be brought within the Federal Insecticide, Fungicide, and Rodenticide Act are characteristically agriculture chemicals. The regulation of their use would provide the same protection to farmers and others using them as is now provided users of products subject to the present act.

(2) These materials have developed into significant agricultural usage since the Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947. Thus, their inclusion within the provisions of that law appears warranted now on the basis of their vastly increased commercial usage.

(3) It is in the interest of uniformity in the regulation of agricultural chemicals to have nematocides, plant regulators, defoliants, and desiccants subject to the same requirements as are insecticides, fungicides, and herbicides.

(4) Many State pesticide statutes presently regulate these materials. The bill would bring them under Federal jurisdiction and would promote uniformity in Federal-State pesticide regulation.

It is estimated that $350,000 would be required to administer the provisions of H. R. 6436.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON

[p. 4]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
May 20, 1959.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This responds to your request of May 13, 1959, to the Commissioner of Food and Drugs for a report on H. R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

The bill would amend the definition of the term "economic poison" in the Federal Insecticide, Fungicide, and Rodenticide Act so that nematocides, plant regulators, defoliants, and desiccants would be regarded as economic poisons for the purpose of that act. This automatically would classify these chemicals, with respect to residues thereof on raw agricultural commodities, as "pesticide chemicals" and exclude them from the term "food additive" for the purposes of the Federal Foood, Drug, and Cosmetic Act, and thus would require tolerances for the residues on food crops to be established under the pesticide chemicals amendment of that act (sec. 408) rather than under the Food Additives Amendment of 1958 (sec. 409).

We defer to the views of the Department of Agriculture insofar as the effect of the bill upon the Insecticide, Fungicide, and Rodenticide Act, which that Department administers, is concerned.

Subject to modification of the transitional provisions of the bill, discussed below, we see no objection to the bill from the standpoint of the Food, Drug, and Cosmetic Act which this Department administers, since, as above indicated, the permanent effect of the bill would be to require safe tolerances for the four groups of agricultural chemicals named in the title to be established under the pesticide chemicals amendment rather than the food additives amendment. Both laws require adequate scientific proof of safety. Indeed, from our viewpoint, some advantage would be gained by having the Secretary of Agriculture certify the usefulness of these chemicals to us, as he is called upon to do under the pesticide chemicals amendment to our act.

We believe, however, that the traditional provisions (sec. 3) of the bill are in need of modification insofar as they pertain to our act.

Section 3(b) would, for a period of time which could extend to as late as March 5, 1961, prevent any of these chemicals which were commercially used before January 1, 1958, from being considered adulterated under the pesticide chemicals amendment to our act when not in conformity with the requirements of that amendment. This transitional period parallels the transitional period during which, under present law, these chemicals need not conform to the pretesting requirements of the food additives amendment. However, unlike the transitional provisions of the food additives amendment (Public Law 85-929, sec. 6(c)), the bill fails to preserve, during this transitional period, the application of the adulteration provisions of the earlier law under which food-bearing residues of added chemicals, if they are poisonous or deleterious substances, would be deemed adulterated unless these chemicals are required in production and meet such tolerance limitations, if any, as we may establish for them.

If enacted in its present form, this section would thus create a loophole in the consumer protection now available under the pure

[p. 5]

food law. For a period that could extend to March 5, 1961, it would make it more difficult, if not impossible, for this Department to safeguard the public in case crops were marketed with excessive residues of certain nematocides, plant regulators, defoliants, or desiccants. This loophole, which we believe was not intended to be created, could be closed by revising section 3(b) of the bill to read as stated in the proposed substitute enclosed herewith.

With the substitution of the enclosed language, we would have no objection to the enactment of this bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,
Assistant Secretary.

PROPOSED SUBSTITUTE FOR SECTION 3(b) OF H.R. 6436

"(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960 or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective,

whichever date first occurs."

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

[p. 6]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purpose of this Act—

a. The term "economic poison" means *(1)* any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, *nematodes*, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest [.] *and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.*

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, *nematodes,* or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

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j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered *with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nematocides or eelworms.*

[g.] *l.* The term "weed" means any plant which grows where not wanted.

[h.] *m.* The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[i.] *n.* The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

[j.] *o.* The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[k.] *p.* The term "active ingredient" means—

> *(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant,* an ingredient which will prevent, destroy, repel, or mitigate insects, *nematodes,* fungi, rodents, weeds, or other pests [.];
>
> *(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;*
>
> *(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;*
>
> *(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.*

[l.] *q.* The term "inert ingredient" means an ingredient which is not active.

[m.] *r.* The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

[n.] *s.* The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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[o.] *t.* The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

[p.] *u.* The term "Secretary" means the Secretary of Agriculture.

[q.] *v.* The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

[r.] *w.* The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

[s.] *x.* The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

[t.] *y.* The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

z. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided,* That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

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"(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) if in the case of an insecticide, *nematocide,* fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison [.] ; *or*

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: Provided, That physical or physiological effects on plants or parts thereof shall not be deemed to

be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

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1.1d (2) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 519, 86th Cong., 1st Sess. (1959)

NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

JULY 15, 1959.—Ordered to be printed

Mr. HOLLAND, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany H. R. 6436]

The Committee on Agriculture and Forestry, to whom was referred the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with an amendment.

This bill provides for regulation of the labeling and marketing of nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act. By bringing these products under that act, the bill would also bring them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act (sec. 408 of that act), which provides the manner in which tolerances are established for their residues on raw agricultural commodities.

The bill is fully explained in the attached report of the House Committee on Agriculture. The amendment recommended by the House committee was adopted by the House.

The committee amendment corrects a reference in the bill to the United States Code. Section 408 of the Federal Food, Drug, and Cosmetic Act should be cited as "21 U.S.C. 346a", rather than "21 U.S.C. 348".

[H. Rept. 552, 86th Cong., 1st sess.]

The Committee on Agriculture, to whom was referred the bill (H.R.6436) to amend the Federal Insecticide, Fungicide, and

Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes, having considered the same,

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report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out entire section 3(b), page 7, line 21, through page 8, line 14, and substitute therefor the following:

> (b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities) shall apply until—
>
> > (1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or
> >
> > (2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective,
>
> whichever date first occurs.

PURPOSE OF THE BILL

The purpose of this bill is to provide for the proper regulation of nematocides, plant regulators, defoliants, and desiccants which have become of great importance to agriculture and related interests during the last 10 years.

Nematocides are used to control very small worms known as nematodes or eelworms, many of which attack plants. Defoliants are used to make leaves drop from plants, generally to permit mechanical harvesting. Desiccants are used to hasten the drying of plant tissues, usually to facilitate harvesting or improve crop quality. Plant regulators are used to modify the normal growth processes of plants or the produce thereof, for such purposes as to prevent fruit drop, to hasten maturity, and to delay sprouting in storage. The products are defined in more precise technical terms in the bill.

The effect of the bill is to subject the aforementioned products to the same regulatory controls and requirements under the Federal Insecticide, Fungicide, and Rodenticide Act as are now applicable to insecticides, fungicides, weed killers, and rodenticides. By placing these products under that act, the bill would also effectively, although indirectly, place them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 518, 83d Cong.), insofar as residues in or on raw agricultural commodities may be involved, because of the interrelationship of the two acts.

The bill would accomplish its objective of placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act by expanding the present definition of "economic poison" in that act to include these products. It would also amend certain other definitions in the act and add some

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additional ones, as necessitated by the broader coverage. However, it does not change the substantive provisions of the act as they relate to presently regulated products.

The bill would become effective upon enactment and thus permit the Department of Agriculture to begin the registration of the newly regulated products, as required by the Federal Insecticide, Fungicide, and Rodenticide Act, and also permit the Department of Health, Education, and Welfare to establish tolerances for them on raw agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act. However, in order to permit an orderly transition period for both the Government and the industry, provision is made to defer the applicability of certain sections of those two acts to some of these products until March 5, 1960, or such later date or dates, not beyond March 5, 1961, as the Secretary of Agriculture and the Secretary of Health, Education, and Welfare, respectively, may prescribe on the basis of a determination that such postponement is necessary to avoid hardships and will not be unduly detrimental to the public interest. These dates have been specified so as to have the fully effective dates under this bill coincide with those under the food additives amendment to the Federal Food, Drug, and Cosmetic Act (Public Law 85–929). Since some products which would be affected by this bill are also subject to the food additives amendment, it has appeared desirable that the two become fully effective at the same time.

BACKGROUND

The original Federal Insecticide Act was passed in 1910. The present Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947 to reflect the then current situation as regards pest control chemicals and agricultural practices. It regulates the labeling and marketing of insecticides, fungicides, herbicides, and rodenticides which are collectively referred to in the act as "economic poisons," and commonly known as pesticides.

Since 1947, several new types of agricultural chemicals have been developed and have found widespread commercial application. These new products are generally referred to and are designated in this bill as nematocides, defoliants, desiccants, and plant regulators. While these products are now regulated under some State laws which correspond to the Federal Insecticide, Fungicide, and Rodenticide Act, they are not regulated under the latter statute. Because of the importance of these products to agricultural interests of this Nation, various organizations and groups have expressed the opinion that they should be subject to similar regulation at the Federal level.

Experience has shown that regulation of agricultural pest control chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act has been effective and beneficial to farmers and growers. Accordingly, it appears desirable that the same type of regulation, under the same act, should be applied to these more recently developed products.

HEARING

A hearing was held by the full committee on this bill. At the hearing, representatives from the Department of Agriculture, land-grant colleges, the Association of American Pesticide Control Officials,

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Inc., farm and grower organizations, and the agricultural chemical industry appeared and testified unanimously in favor of the bill and urged its enactment.

COMMITTEE AMENDMENT

In addition to placing nematocides, plant regulators, defoliants, and desiccants under the Federal Insecticide, Fungicide, and Rodenticide Act, the bill also makes residues of such chemicals in or on raw agricultural commodities subject to the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act. The bill, as introduced, provided that that amendment would not be applicable to some of the chemicals for a period of time to be specified by the Secretary of Health, Education, and Welfare, but not extending beyond March 5, 1961. The committee amendment, adopted upon the recommendation of the Department of Health, Education, and Welfare, provides that during this transitional period, the adulteration provisions of the earlier law shall be applicable for the purpose of protecting the public health.

DEPARTMENTAL REPORTS

Reports recommending enactment of H.R. 6436 were received from both the Department of Agriculture and the Department of Health, Education, and Welfare. In connection with the estimates of cost in the report of the Department of Agriculture, it is to be noted that many of the products are now scheduled for regulation by the Food and Drug Administration under the provisions of the food additives amendment, so that transfer of their regulation to the Department of Agriculture under terms of this bill will be in part a transfer of administrative cost. Thus the estimates of administrative cost made by the Department of Agriculture are not all new or additional costs.

The amendment recommended by the Department of Health, Education, and Welfare was adopted by the committee.

MAY 21, 1959.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR CONGRESSMAN COOLEY: This is in reply to your request of April 16 for a report on H.R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

This Department supports the purposes of the bill and recommends its enactment.

The bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to bring within the provisions of that law four new classes of chemicals. These classes are nematocides, plant regulators, defoliants, and desiccants.

Our reasons for making the above recommendation are as follows:

(1) The new classes of chemicals which would be brought within the Federal Insecticide, Fungicide, and Rodenticide Act are characteristically agricultural chemicals. The regulation of their use

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would provide the same protection to farmers and others using them as is now provided users of products subject to the present act.

(2) These materials have developed into significant agricultural usage since the Federal Insecticide, Fungicide, and Rodenticide Act was enacted in 1947. Thus, their inclusion within the provisions of that law appears warranted now on the basis of their vastly increased commercial usage.

(3) It is in the interest of uniformity in the regulation of agricultural chemicals to have nematocides, plant regulators, defoliants, and desiccants subject to the same requirements as are insecticides, fungicides, and herbicides.

(4) Many State pesticide statutes presently regulate these materials. The bill would bring them under Federal jurisdiction and would promote uniformity in Federal-State pesticide regulation.

It is estimated that $350,000 would be required to administer the provisions of H.R. 6436.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
May 20, 1959.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This responds to your request of May 13, 1959, to the Commissioner of Food and Drugs for a report on H.R. 6436, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

The bill would amend the definition of the term "economic poison" in the Federal Insecticide, Fungicide, and Rodenticide Act so that nematocides, plant regulators, defoliants, and desiccants would be regarded as economic poisons for the purpose of that act. This automatically would classify these chemicals, with respect to residues thereof on raw agricultural commodities, as "pesticide chemicals" and exclude them from the term "food additive" for the purposes of the Federal Food, Drug, and Cosmetic Act, and thus would require tolerances for the residues on food crops to be established under the pesticide chemicals amendment of that act (sec. 408) rather than under the Food Additives Amendment of 1958 (sec. 409).

We defer to the views of the Department of Agriculture insofar as the effect of the bill upon the Insecticide, Fungicide, and Rodenticide Act, which that Department administers, is concerned.

Subject to modification of the transitional provisions of the bill, discussed below, we see no objection to the bill from the standpoint of the Food, Drug, and Cosmetic Act which this Department administers, since, as above indicated, the permanent effect of the bill would be to require safe tolerances for the four groups of agricultural chemicals named in the title to be established under the pesticide chemicals amendment rather than the food additives amendment. Both laws require adequate scientific proof of safety. Indeed, from our viewpoint, some advantage would be gained by having the Secretary of Agriculture certify the usefulness of these chemicals to us, as he is called upon to do under the pesticide chemicals amendment to our act.

[p. 5]

We believe, however, that the transitional provisions (sec. 3) of the bill are in need of modification insofar as they pertain to our act.

Section 3(b) would, for a period of time which could extend to as late as March 5, 1961, prevent any of these chemicals which were commercially used before January 1, 1958, from being considered adulterated under the pesticide chemicals amendment to our act when not in conformity with the requirements of that amendment. This transitional period parallels the transitional period during which, under present law, these chemicals need not conform to the pretesting requirements of the food additives amendment. However, unlike the transitional provisions of the food additives amendment (Public Law 85-929, sec. 6(c)), the bill fails to preserve, during this transitional period, the application of the adulteration provisions of the earlier law under which food-bearing residues of added chemicals, if they are poisonous or deleterious substances, would be deemed adulterated unless these chemicals are required in production and meet such tolerance limitations, if any, as we may establish for them.

If enacted in its present form, this section would thus create a loophole in the consumer protection now available under the pure food law. For a period that could extend to March 5, 1961, it would make it more difficult, if not impossible, for this Department to safeguard the public in case crops were marketed with excessive residues of certain nematocides, plant regulators, defoliants, or desiccants. This loophole, which we believe was not intended to be created, could be closed by revising section 3(b) of the bill to read as stated in the proposed substitute enclosed herewith.

With the substitution of the enclosed language, we would have no objection to the enactment of this bill.

The Bureau of the Budget advises that it perceives no objection to the submission of this report to your committee.

Sincerely yours,

ELLIOT L. RICHARDSON,
Assistant Secretary.

PROPOSED SUBSTITUTE FOR SECTION 3(b) OF H.R. 6436

"(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities), shall apply until—

"(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

"(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective,

whichever date first occurs."

[p. 6]

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means *(1)* any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, *nematodes*, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest [.], *and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.*

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, *nematodes*, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "nematocide" means any substance or mixture of substancs intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or [p. 7] *the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.*

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

[g.] *l.* The term "weed" means any plant which grows where not wanted.

[h.] *m.* The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[i.] *n.* The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

[j.] *o.* The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except

option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);
and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[k.] *p*. The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, *nematodes,* fungi, rodents, weeds, or other pests [.];

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

[p. 8]

[l.] *q*. The term "inert ingredient" means an ingredient which is not active.

[m.] *r*. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

[n.] *s*. The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

[o.] *t*. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

[p.] *u*. The term "Secretary" means the Secretary of Agriculture.

[q.] *v*. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

[r.] *w*. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

[s.] *x*. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

[t.] *y.* The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

[u.] *z.* The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container [p. 9] cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided,* That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; *or*

(g) if in the case of an insecticide, *nematocide,* fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison [.]; *or*

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: Provided, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

[p. 10]

1.1d (3) CONGRESSIONAL RECORD, VOL. 105 (1959);

1.1d (3) (a) July 6: Amended and passed House, pp. 12712–12713;

AMENDING THE INSECTICIDE ACT

The Clerk called the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959".

SEC. 2. (A) The Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163; 7 U.S.C. 135-135k) is amended so that sections 2a and 2b read as follows.

"a. The term 'economic poison' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"b. The term 'device' means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom."

(B) Section 2 of such Act is further amended by redesignating subsections g through u to be subsections l through z respectively; and by adding new subsections g, h, i, j, and k, and amending new subsections p and z, to read respectively, as follows:

"g. The term 'nemotocide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

"h. The term 'plant regulator' meahs any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

[p. 12712]

"i. The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"j. The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"k. The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

"p. The term 'active ingredient' means—

"(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"z. The term 'misbranded' shall apply—

"(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(2) to any economic poison—

"(a) if it is an imitation of or is offered for sale under the name of another economic poison;

"(b) if its labeling bears any reference to registration under this Act;

"(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

"(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

"(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

"(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

"(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

"(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations."

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3. "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,
whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant, if such use was made of such substance before January 1, 1958, clause (2) (B) of section 402(a) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 342), shall not apply until—

(1) March 5, 1960, or at the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 348), becomes effective,
whichever date first occurs.

With the following committee amendment:

Strike out entire section 3(b), page 7, line 21, through page 8, line 14, and substitute therefor the following:

"(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of enactment of the Act of July 22, 1954, 68 Stat. 511 (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

"(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

"(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) becomes effective,
whichever date first occurs."

Mr. ALBERT. Mr. Speaker, I offer an amendment to the committee amendment.

The clerk read as follows:

Amendment offered by Mr. ALBERT to the committee amendment: Page 9, line 1, strike out "was" and insert in lieu thereof "use."

The amendment to the committee amendment was agreed to.

The committee amendment as amended was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

[p. 12713]

1.1d (3) (b) July 16: Amended and passed Senate, p. 13588

AMENDMENT OF FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Mr. JOHNSON of Texas. Mr. President, I promised the Senator from Florida [Mr. HOLLAND] that I would call up Calendar No. 520, H.R. 6436. There is no controversy about the bill, and it has been cleared by the leadership on both sides.

I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 520, H.R. 6436.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and desiccants, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Texas?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Agriculture and Forestry with an amendment.

Mr. HOLLAND. Mr. President, the bill was reported by a unanimous vote of the Committee on Agriculture and Forestry after it had passed the House without objection.

The bill relates to the present Federal Insecticide, Fungicide, and Rodenticide Act, which was passed some years ago. At that time, all the known sprays, liquids, and other kinds of poisons which were used as insecticides, fungicides, and rodenticides were placed under the control of the Department of Agriculture. Since that time, other similar agricultural items have been developed, one group of which is known as nematocides, which deals with nematodes. Others are plant regulators, defoliants, and desiccants.

With the approval of all the agencies concerned, and at the request of all the agricultural groups concerned, this bill was drafted to give authority to regulate these new types of agricultural chemicals so as to protect the public. Inclusion of these chemicals in the Federal Insecticide, Fungicide, and Rodenticide Act automatically includes them under the pesticide chemicals amendment to the Federal Food, Drug, and Cosmetic Act. These new products, which were not included in the old act, will become subject to exactly the same kind of regulation and control.

As I have said, the bill, which is a House bill, was passed by the House on an unobjected-to basis.

It was reported unanimously by the Senate Committee on Agriculture and Forestry. It will simply afford the public the protection which it already has in the fields of insecticides, fungicides, and rodenticides, namely, a close regulation and control by the Federal agency concerned.

The PRESIDING OFFICER (Mr. MANSFIELD in the chair). The committee amendment will be stated.

The LEGISLATIVE CLERK. On page 8, in line 7, after "(21 U.S.C.)," it is proposed to strike out "348" and to insert "346a."

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 6436) was read the third time and passed.

[p. 13588]

1.1d (3) (c) July 29: House concurs in Senate amendment, p. 14629

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. COOLEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6436) to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to include nematocides, plant regulators, defoliants, and dessicants, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 8, line 7, strike out "348" and insert "346a."

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

Mr. HOEVEN. Mr. Speaker, reserving the right to object, and I shall not object, may I ask the chairman what the Senate amendment is?

Mr. COOLEY. It merely corrects an error made in the drafting of the bill and changes the section referred to in the United States Code.

Mr. HOEVEN. It is just a clerical error?

Mr. COOLEY. That is all it is.

Mr. HOEVEN. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

[p. 14629]

1.1e ADDITIONAL TIME FOR REGISTRATION OF CERTAIN NEMATOCIDES, PLANT REGULATORS, DEFOLIANTS AND DESICCANTS, MARCH 29, 1961, P.L. 87-10, 75 STAT. 18

AN ACT

To amend the transitional provisions of the Act approved August 7, 1959, entitled "Nematocide, Plant Regulator, Defoliant and Desiccant Amendment of 1959".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (a) of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 287) is amended by deleting the comma and the word "or" appearing at the end of clause (1) and adding at the end of such clause a colon and the following: "*Provided*, That with respect to any nematocide, plant regulator, defoliant, or desiccant whose use results in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, the Secretary may prescribe a date beyond March 5, 1961, on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships: *Provided further*, That such date shall not be extended beyond (i) the date on which an order with respect to the use of such product under section 408 of the Federal

Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective or (ii) the date on which any extension granted under paragraph (b) of this section is terminated, or".

Approved March 29, 1961.

[p. 18]

1.1e (1) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 74, 87th Cong., 1st Sess. (1961)

ADDITIONAL TIME FOR REGISTRATION OF CERTAIN NEMATOCIDES, PLANT REGULATORS, DEFOILANTS, AND DESICCANTS

MARCH 16, 1961.—Ordered to be printed

Mr. ELLENDER, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 1028]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 1028) to amend the transitional provisions of the act approved August 7, 1959, entitled "Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959," having considered the same, report thereon with a recommendation that it do pass with an amendment.

This bill would extend the time within which certain nematocides, plant regulators, defoliants, and desiccants may be continued exempt from certain provisions of the Federal Insecticide, Fungicide, and Rodenticide Act until such time as the Pesticide Chemicals Amendment to the Federal Food, Drug, and Cosmetic Act is made fully applicable to such products. It was requested by the Department of Agriculture and, with the committee amendment, is identical to H.R. 4662, as reported by the House Committee on Agriculture.

The Federal Insecticide, Fungicide, and Rodenticide Act provides authority for regulating the marketing of pesticides and devices for controlling plant and animal pests, including the testing, registration, and labeling of these products. The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 brought those products under the Insecticide Act, but delayed the effect of that act's prohibitions with respect to such products until registration could be accomplished, or until March 5, 1960, or such later date not beyond March 5, 1961, as the Secretary of Agriculture might find would not be unduly detrimental to the public interest and would be necessary to avoid hardships.

[p. 1]

In bringing these products under the Insecticide Act, the Nematocide Amendment also brought such of these products as might leave residues on raw agricultural commodities under the Pesticide Chemicals Amendment of the Federal Food, Drug, and Cosmetic Act. In order to provide adequate time for the establishment of tolerances under the Pesticide Chemicals Amendment for such products used prior to January 1, 1958 the adulterant provisions of the Federal Food, Drug, and Cosmetic Act as they existed prior to the adoption of the Pesticide Chemicals Amendment were continued effective with respect to such products for such uses until such tolerances could be established, or until certain dates, but in no event later than March 5, 1961. H.R. 3980, as passed by the House on March 14, 1961, would provide additional time for the establishment of such tolerances under the Pesticide Chemicals Amendment. So long as such tolerances have not been established, proper labeling under the Insecticide Act cannot be determined. If the time within which such tolerances can be established is extended, it is essential that the existing exemption from certain provisions of the Insecticide Act be extended. If the time for establishing such tolerances is not extended, the bill herein being reported would have no effect. The bill is effective with respect to any product only if the Secretary of Agriculture determines that extension under the bill will not be unduly detrimental to the public interest and is necessary to avoid hardship.

The committee amendment would strike out language which does not appear to be necessary and which might cause some difficulty. If the time for the establishment of tolerances under the Pesticide Chemicals Amendment is extended, the time for registration under the Insecticide Act should probably be similarly extended without regard to whether an extension to March 5, 1961, has previously been granted under the Insecticide Act.

DEPARTMENTAL VIEWS

DEPARTMENT OF AGRICULTURE,
Washington, D. C., February 13, 1961.

THE PRESIDENT OF THE SENATE,
U.S. Senate.

DEAR MR. PRESIDENT: There is transmitted herewith, for the consideration of the Congress, a draft bill entitled "To amend the transitional provisions of the act approved August 7, 1959, entitled 'Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959.' "

The proposed legislation would authorize the Secretary of Agriculture to extend the effective date under section 3(a) (1) of the Nematocide, Plant Regulator, Defoliant, and Desicccant Amendment of 1959 (Public Law 86–139) beyond March 5, 1961. This authority would be limited to those nematocides, plant regulators, defoliants, or desiccants whose use (1) results in a residue remaining in or on a food at the time of introduction into interstate commerce, (2) had commercial application prior to January 1, 1958, and (3) had been extended to March 5, 1961.

The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139, 73 Stat. 286) subjected four new classes of products [p. 2] —nematocides, plant regulators, defoliants, and desiccants—to the regulatory controls and requirements of the Federal Insecticide, Fungicide, and Rodenticide Act. By classifying these products as "economic poisons" under such act, the amendment also placed the products under the Pesticide Chemicals Amendment (Public Law 518, 83d Cong., 68 Stat. 511) to the Federal Food, Drug, and Cosmetic Act insofar as residues in or on raw agricultural commodities may be involved. The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment was, in general, made effective upon enactment in order to permit this Department to begin the registration of the newly regulated products under the Federal Insecticide, Fungicide, and Rodenticide Act and to permit the Department of Health, Education, and Welfare to establish tolerances with respect to such products under section 408 (relating to pesticide chemicals) of the Federal Food, Drug, and Cosmetic Act. However, in order to provide for an orderly transition period for both the Government and the industry (pending such registration or establishment of tolerances), provision was made to defer the applicability of certain sections of the Federal Insecticide, Fungicide, and Rodenticide Act, and to preserve the applicability of the adulteration provisions of the Federal Food, Drug, and Cosmetic Act antedating the Pesticide Chemicals Amendment, to some of these products until such date, not beyond March 5, 1961, as the Secretaries of Agriculture and Health, Education, and Welfare, respectively, might find necessary and consistent with the public interest or health. The said Secretaries have granted an extension until March 5, 1961, with respect to certain of these products.

Industry studies to obtain residue and toxicological data necessary in obtaining registration of some of these products under the Federal Insecticide, Fungicide, and Rodenticide Act are now underway, but will not be completed by March 5, 1961. The proposed bill would authorize the Secretary of Agriculture to extend beyond March 5, 1961, the effective date of the registration and enforcement provisions of the Federal Insecticide, Fungicide, and Rodenticide Act with respect to these products. Under the proposed bill, extensions would be authorized only (1) with respect to those products for which an extension to March 5, 1961, has been granted and (2) upon a determination by the Secretary of Agriculture that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships. Thus, the proposed bill would allow continued use of these products, where no public health risk is involved, by making it possible to provide additional time to complete the necessary scientific investigations.

We understand that the Department of Health, Education, and Welfare has requested corresponding legislation with respect to those transitional provisions that relate to the application of the Federal Food, Drug, and Cosmetic Act. The enclosed draft bill and the legislation proposed by the Department of Health, Education, and Welfare would make it possible to subject these products to all the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and of the pesticide chemical provisions of the Federal Food, Drug, and Cosmetic Act upon the same date.

[p. 3]

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959 (PUBLIC LAW 86–139)

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships: *Provided, That with respect to any nematocide, plant regulator, defoliant, or desiccant whose use results in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, the Secretary may prescribe a date beyond March 5, 1961, on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships: Provided*

further, That such date shall not be extended beyond (i) the date on which an order with respect to the use of such product under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective or (ii) the date on which any extension granted under paragraph (b) of this section is terminated, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

Section 3(b) of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 would not be amended by the bill, but the effect of the bill depends upon some extension of section 3(b), such as would be made by H.R. 3980, as passed by the House of Representatives. Section 3(b), as it would be amended by H.R. 3980, is therefore set out below, the new matter which would be added by H.R. 3980 being set out in boldface type.

[p. 4]

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs. **Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, notwithstanding the provision to the contrary in such clause (1), further extend the expiration date, not beyond June 30, 1964, applicable under such clause (1) (but subject to clause (2)) with respect to such use of**

such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

[p. 5]

1.1e (2) HOUSE COMMITTEE ON AGRICULTURE

H. R. REP. No. 61, 87th Cong., 1st Sess. (1961)

AMENDING THE TRANSITIONAL PROVISIONS OF THE FEDERAL INSECTICIDE ACT, AS AMENDED

MARCH 7, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 4662]

The Committee on Agriculture, to whom was referred the bill (H.R. 4662) to amend the transitional provisions of the act approved August 7, 1959, entitled "Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959," having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, lines 6 and 7, beginning with the comma after "hardships" strike out the remainder of line 6 and that portion of line 7 preceding the colon.

PURPOSE

The purpose of this bill is to provide authority to the Secretary of Agriculture to extend the effective date under section 3(a)(1) of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139), beyond March 5, 1961. This authority would be limited to those nematocides, plant regulators, defoliants, or desiccants whose use (1) results in a residue remaining in or on a food at the time of introduction into interstate commerce, and (2) had commercial application prior to January 1, 1958.

NEEDS

The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139, 73 Stat. 286) subjected four new classes of products—nematocides, plant regulators, defoliants, and desiccants—to the regulatory controls and requirements of the Federal Insecticide, Fungicide, and Rodenticide Act. By [p. 1] classifying these products as "economic poisons" under such act, the amendment also placed the products under the Pesticide Chemicals Amendment (Public Law 518, 83d Cong., 68 Stat. 511) to the Federal Food, Drug, and Cosmetic Act insofar as residues in or on raw agricultural commodities may be involved. The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment was, in general, made effective upon enactment in order to permit this Department to begin the registration of the newly regulated products under the Federal Insecticide, Fungicide, and Rodenticide Act and to permit the Department of Health, Education, and Welfare to establish tolerances with respect to such products under section 408 (relating to pesticide chemicals) of the Federal Food, Drug, and Cosmetic Act. However, in order to provide for an orderly transition period for both the Government and the industry, provision was made to defer the applicability of certain sections of the Federal Insecticide, Fungicide, and Rodenticide Act, and to preserve the applicability of the adulteration provisions of the Federal Food, Drug, and Cosmetic Act antedating the Pesticide Chemicals Amendment, to some of these products until such date, not beyond March 5, 1961, as the Secretaries of Agriculture and Health, Education, and Welfare, respectively, might find necessary and consistent with the public interest or health. The said Secretaries have granted an extension until March 5, 1961, with respect to certain of these products.

Industry studies to obtain residue and toxicological data necessary in obtaining registration of some of these products under the

Federal Insecticide, Fungicide, and Rodenticide Act are now underway, but cannot be completed by March 5, 1961. The bill would authorize the Secretary of Agriculture to extend beyond March 5, 1961, the effective date of the registration and enforcement provisions of the Federal Insecticide, Fungicide, and Rodenticide Act with respect to these products. Extensions would be authorized only upon a determination by the Secretary that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships. Thus, the bill would allow continued use of these products, where no public health risk is involved, by making it possible to provide additional time to complete the necessary scientific investigations.

The Department of Health, Education, and Welfare has requested corresponding legislation with respect to those transitional provisions that relate to the application of the Federal Food, Drug, and Cosmetic Act.

COST

Enactment of the bill will not require any increase in appropriations.

DEPARTMENTAL VIEWS

Under date of February 13, 1961, the Department submitted to the Congress draft legislation for this purpose. Following is the letter recommending the legislation and giving the reasons therefor.

[p. 2]

DEPARTMENT OF AGRICULTURE,
Washington, D.C., February 13, 1961.

Hon. SAM RAYBURN,
The Speaker,
House of Representatives.

DEAR MR. SPEAKER: There is transmitted herewith, for the consideration of the Congress, a draft bill entitled "To amend the transitional provisions of the act approved August 7, 1959, entitled 'Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959.' "

The proposed legislation would authorize the Secretary of Agriculture to extend the effective date under section 3(a)(1) of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139) beyond March 5, 1961. This authority would be limited to those nematocides, plant regulators, defoliants, or desiccants whose use (1) results in a residue remaining in or on a food at the time of introduction into interstate commerce, (2) had commercial application prior to January 1, 1958, and (3) had been extended to March 5, 1961.

The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139, 73 Stat. 286) subjected four new classes of products —nematocides, plant regulators, defoliants, and desiccants—to the regulatory controls and requirements of the Federal Insecticide, Fungicide, and Rodenticide Act. By classifying these products as "economic poisons" under such act, the amendment also placed the products under the pesticide chemicals amendment (Public Law 518, 83d Cong., 68 Stat. 511) to the Federal Food, Drug, and Cosmetic Act insofar as residues in or on raw agricultural commodities may be involved. The nematocide, plant regulator, defoliant, and desiccant amendment was, in general, made effective upon enactment in order to permit this Department to begin the registration of the newly regulated products under the Federal Insecticide, Fungicide, and Rodenticide Act and to permit the Department of Health, Education, and Welfare to establish tolerances with respect to such products under section 408 (relating to pesticide chemicals) of the Federal Food, Drug, and Cosmetic Act. However, in order to provide for an orderly transition period for both the Government and the industry (pending such registration or establishment of tolerances), provision was made to defer the applicability of certain sections of the Federal Insecticide, Fungicide, and Rodenticide Act, and to preserve the applicability of the adulteration provisions of the Federal Food, Drug, and Cosmetic Act antedating the Pesticide Chemicals Amendment, to some of these products until such date, not beyond March 5, 1961, as the Secretaries of Agriculture and Health, Education, and Welfare, respectively, might find necessary and consistent with the public interest or health. The said Secretaries have granted an extension until March 5, 1961, with respect to certain of these products.

Industry studies to obtain residue and toxicological data necessary in obtaining registration of some of these products under the Federal Insecticide, Fungicide, and Rodenticide Act are now underway, but will not be completed by March 5, 1961. The proposed bill would authorize the Secretary of Agricul-

[p. 3]

ture to extend beyond March 5, 1961, the effective date of the registration and enforcement provisions of the Federal Insecticide, Fungicide, and Rodenticide Act with respect to these products. Under the proposed bill, extensions would be authorized only (1) with respect to those products for which an extension to March 5, 1961, has been granted, and (2) upon a determination by the Secretary of Agriculture that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships. Thus, the proposed bill would allow continued use of these products, where no public health risk is involved, by making it possible to provide additional time to complete the necessary scientific investigations.

We understand that the Department of Health, Education, and Welfare has requested corresponding legislation with respect to those transitional provisions that relate to the application of the Federal Food, Drug, and Cosmetic Act. The enclosed draft bill and the legislation proposed by the Department of Health, Education, and Welfare would make it possible to subject these products to all the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and of the pesticide chemical provisions of the Federal Food, Drug, and Cosmetic Act upon the same date.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the

House of Representatives, changes in existing law made by the bill, are shown as follows (existing law is in roman; deleted material is in brackets; and new language is in italic):

NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959 (PUBLIC LAW 86-139)

SEC. 3. This Act shall take effect on the date of its enactment, except that —

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or dissicant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until —

> (1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships [, or]:
>
> [p. 4]
>
> *Provided, That with respect to any namatocide, plant regulator, defoliant, or desiccant whose use results in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, the Secretary may prescribe a date beyond March 5, 1961, on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, if an extension to March 5, 1961, has been granted for such product under this paragraph (a): Provided further, That such date shall not be extended beyond (i) the date on which an order with respect to the use of such product under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective or (ii) the date on which any extension granted under paragraph (b) of this section is terminated, or*
>
> (2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act, whichever date first occurs; and
>
> [p. 5]

1.1e (3) CONGRESSIONAL RECORD, VOL. 107 (1961)

1.1e (3) (a) March 20: Amended and passed Senate, pp. 4282–4283

REGISTRATION OF CERTAIN NEMATOCIDES, PLANT REGULATORS, DEFOLIANTS, AND DESICCANTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 70, S. 1023.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1028) to amend the transitional provisions of the act approved August 7, 1959, entitled "Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959."

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture and Forestry, with amendments, on page 2, at the beginning of line 6, to strike out the comma and "if an extension to March 5, 1961, has been granted for such product under this paragraph (a)", so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (a) of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 287) is amended by deleting the comma and the word "or" appearing at the end of clause (1) and adding at the end of such clause a colon and the following: "*Provided*, That with respect to any nematocide, plant regulator, defoliant, or desiccant whose use results in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, the Secretary may prescribe a date beyond March 5, 1961, on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships: *Provided further*, That such date shall not be extended beyond (1) the date on which an order with respect to the use of such product under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective or (ii) the date on which any extension granted under paragraph (b) of this section is terminated or".

Mr. HOLLAND. Mr. President, I think a brief explanation of the bill would be in order. The chairman of the Committee on Agriculture and Forestry, the distinguished Senator from Louisiana [Mr. ELLENDER], had expected to make a statement, but was called from the Senate Chamber a few minutes ago. He asked the Senator from Florida to make a statement about the bill in the event he had not returned by the time the bill was called up.

The Committee on Agriculture and Forestry unanimously passed upon the measure, reported it favorably, and asked that it be approved with a small amendment, which will be stated at the proper time.

The bill would extend the time within which certain nematocides, plant regulators, defoliants, and desiccants may be continued exempt from certain provisions of the Federal Insecticide, Fungicide, and Rodenticide Act until such time as the Pesticide Chemical Amendment to the Federal Food, Drug, and Cosmetic Act is made fully applicable to such products. It was requested by the Department of Agriculture and, with the committee amendment, is identical to H.R. 4662, as reported by the House Committee on Agriculture.

In 1959, when the original act was passed, bringing nematocides, plant regulators, defoliants, and desiccants under the Insecticide Act, and under the Pesticide Chemicals Amendment of the Federal Food, Drug, and Cosmetic Act, provision was made deferring certain effects of the Insecticide Act until tolerances could be established under the Pesticide Chemical Amendment. As to many of the new chemicals, the act is already applicable, because the research has been completed, and the tolerances have been declared by the Food and Drug Administration, and have been applied to those particular chemicals. However, as to other chemicals, the research has not yet been completed, and the passage of the bill would permit the Secretary of Agriculture to defer certain effects of the Insecticide Act until a determination of the facts by the Food and Drug Administration has been made, so that the particular chemicals which are now being used, and have been used without any serious results to anybody, could continue to be used, provided that the Secretary of Agriculture must in each case determine that such action will not be unduly detrimental to the public interest and is necessary to avoid hardship.

Industry studies to obtain residue and toxicological data necessary in obtaining registration of some of these

[p. 4282]

products under the Federal Insecticide, Fungicide, and Rodenticide Act are now underway, but were not completed by March 5, 1961, which was the terminal date of the present exemption. The bill would authorize the Secretary of Agriculture to extend beyond March 5, 1961, the effective date of the registration and enforcement provisions of the Federal Insecticide, Fungicide, and Rodenticide Act with respect to these particular products.

Under the bill, extensions would be authorized for any products only upon a determination by the Secretary of Agriculture that such action would not be unduly detrimental to the public interest and is necessary to avoid hardships and upon extension by the Secretary of Health, Education, and Welfare of the time within which such products are not fully subject to the pesticide chemicals amendment. Such extension by the Secretary of Health, Education, and Welfare depends upon the enactment of additional legislation now pending before the Congress. Thus the bill would allow the continued use of these products only where no substantial public health risk is involved, by making it possible to provide additional time to complete the necessary scientific investigations, which, by the way, are underway in the most urgent fashion and manner possible.

I know of no objection to the bill. I think it would be administered with due regard to the health of all the people of the United States and with fair treatment to the manufacturers of the chemicals in question.

I ask that the committee amendment be considered and agreed to, and that the bill as amended be passed.

The VICE PRESIDENT. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The VICE PRESIDENT. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1028) was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move the Senate reconsider the vote by which the bill was passed.

Mr. HOLLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

[p. 4283]

1.1e (3) (b) March 21: Passed House, p. 4399

AMENDMENT OF FEDERAL INSECTICIDE ACT

The Clerk called the bill (H.R. 4662) to amend the transitional provisions of the act approved August 7, 1959, entitled "Nematocide, Plant Regulator, Defoliant, Desiccant Amendment of 1959."

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. COOLEY. Mr. Speaker, I ask

unanimous consent that a similar Senate bill, S. 1028, be considered in lieu of the House bill.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the Unted States of America in Congress assembled, That paragraph (a) of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 287) is amended by deleting the comma and the word "or" appearing at the end of clause (1) and adding at the end of such clause a colon and the following: "*Provided,* That with respect to any nematocide, plant regulator, defoliant, or desiccant whose use results in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, the Secretary may prescribe a date beyond March 5, 1961, on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships: *Provided further,* That such date shall not be extended beyond (i) the date on which an order with respect to the use of such product under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective or (ii) the date on which any extension granted under paragraph (b) of this section is terminated, or".

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 4662) was laid on the table.

[p. 4399]

1.1f FOOD ADDITIVES TRANSITIONAL PROVISION AMENDMENT OF 1961

April 7, 1961, P. L. 87-19, 75 Stat. 42

AN ACT

To amend the transitional provisions of the Act approved September 6, 1958, entitled "An Act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food Additives Transitional Provisions Amendment of 1961".

SEC. 2. Subsection (c) of section 6 of the Food Additives Amendment of 1958 (Public Law 85-929, 72 Stat. 1784, 1788) is amended by inserting in such subsection, at the end thereof, the following: "Whenever the Secretary has, pursuant to clause (1) (B) of this subsection, extended the effective date of section 3 of this Act to March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date, not beyond June 30, 1964, under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1) (B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 409. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension."

SEC. 3. Paragraph (b) of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 288) is amended by inserting in such paragraph, at the end thereof, the following: "Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, notwithstanding the provision to the contrary in such clause (1), further extend the expiration date, not beyond June 30, 1964, applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may

[p. 42]

at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension."

Approved April 7, 1961.

[p. 43]

1.1f (1) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H. R. REP. No. 53, 87th Cong., 1st Sess. (1961)

FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1961

MARCH 3, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 3980]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 3980) to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety", and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 2, line 3, strike out "March 6, 1961" and insert in lieu thereof "March 5, 1961".

Page 2, after the comma at the end of line 3, insert "or has on that date a request for such extension pending before him,".

Page 2, line 6, after the word "date", insert ", not beyond June 30, 1964,".

Page 3, line 8, after "1961," insert "or has on that date a request for such extension pending before him,".

Page 3, line 11, after the word "date", insert ", not beyond June 30, 1964,".

PURPOSE OF THE BILL

The purpose of this bill is to continue until June 30, 1964, the authority of the Secretary of Health, Education and Welfare, which expires on March 5, 1961, to permit the continued use of certain food additives and pesticide chemicals which have been in commercial use since January 1, 1958, until the necessary investigations and scientific studies now in progress by both the industries concerned and the Federal Food and Drug Administration [p. 1] can be completed and regulations adopted to provide final assurance of the safe use of these additives and chemicals. These investigations and studies are for the purpose of determining whether a large number of substances are actually additives in or on a food and, if they are, what if any tolerance limitations or other conditions should be imposed on their use in order to protect the public health.

Under the bill, the Secretary of Health, Education, and Welfare could permit the continued use of the food additives or pesticide chemicals which have not been finally cleared for safety, only if such additives and chemicals were in commercial use before January 1, 1958, and if he finds that such action would involve no undue risk to the public health and that conditions exist which necessitate the extension. Moreover, he could invoke this authority only in those instances where he has received satisfactory evidence, and has either authorized or has pending a request for authorization for the continued usage of these chemicals up to March 5, 1961, the limit of his authority, and he finds that the persons requesting the extensions have taken bona fide action before March 6, 1960, to investigate the chemicals concerned, that such investigations have continued with reasonable diligence and that more time is necessary to complete them.

The Secretary would, at any time, be able to terminate any extension of time granted under this legislation if he finds that (1) it should not have been granted, (2) the basis for an extension no longer exists owing to a change in circumstances, or (3) there has been a failure to comply with any requirement for the submission of progress reports or with other conditions attached to the extension.

NEED FOR LEGISLATION

The legislation is needed both by the Secretary of Health, Education, and Welfare and by the industries concerned. The Secretary has informed the committee that the Food and Drug Administration has been unable to process before March 6, 1961, all the food additive and pesticide chemical petitions for safety clearance now pending. Those not cleared would have to be removed from commercial use even though they have been in use since before January 1, 1958, unless this legislation is enacted. Moreover, the committee has been informed that the industries affected will not be able to develop before March 6, 1961, all the necessary scientific data and to file petitions on which the Secretary can act to clear many additives. The magnitude of the food additive problem is such that the original 2½-year transitional period has not been long enough.

The Food Additives Amendment of 1958 (Public Law 85-929) amending the Federal Food, Drug, and Cosmetic Act became generally effective on March 5, 1959, 180 days after the date of enactment. However, with respect to any particular commercial use of a food additive before January 1, 1958, Public Law 85-929 authorized the Secretary of Health, Education, and Welfare to permit its continued commercial use while the industries concerned proceeded to develop all the necessary scientific information and data to petition the Secretary for safety clearance.

While it was felt at the time of enactment of this legislation that a deferred effective date of 18 months would be generally sufficient, it was realized that there would be some instances [p. 2] where a further extension of time might become necessary, particularly in cases where extensive scientific work would be required. Hence Public Law 85-929 authorized the Secretary to allow, in these instances, an extension ending not later than March 5, 1961, based on a finding that such an extension, in each instance, would involve no undue risk to the public health and that conditions exist which necessitate such action. Under this authority the Secretary has granted over 3,000 postponements.

The Secretary of Health, Education, and Welfare has advised the committee that the March 5, 1961, cutoff date on his authority to grant extensions would operate unfairly in a number of situations where the continued use of an additive beyond this date would be consistent with the protection of the public health and where the industry concerned has exercised due diligence in starting and pursuing the necessary scientific work but has been unable to complete the work and file a petition for safety clearance in time for the Secretary to act.

The committee believes that the extension of authority to the Secretary of Health, Education, and Welfare to June 30, 1964, will be sufficient to enable him and industry to complete most, if not all, of the work involved in the investigations already underway.

The bill grants similar authority to the Secretary with respect to certain pesticide chemicals—about 30 in number—which were in the category of food additives before August 7, 1959, but became pesticide chemicals on that date by reason of a change in the definition of a term which encompasses such chemicals. This change was made by the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139), amending the Federal Insecticide, Fungicide, and Rodenticide Act which had the effect of reclassifying nematocides, plant regulators, defoliants, and desiccants from the category of food additives to the category of pesticide chemicals.[1]

A question was raised at the hearings by members of the committee as to how the Food and Drug Administration would deal with a substance which is not now considered to be a food additive but which may at some future date be suspected of meeting this definition, or with a substance for which a prior sanction was granted but which may lose such status.

In response to this question, the Commissioner of Food and Drugs submitted the following letter stating the position of the Food and Drug Administration on this subject. The Commissioner advised the committee that he had adequate authority to handle such situations in a judicious manner and that he would not proceed immediately with enforcement action to ban the use of such substances in commerce unless he was convinced that there was an imminent hazard to the public health.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

February 28, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request, at the hearing of H. R. 3980, a bill to amend the transitional provisions of the Food Additives Amendment of 1958, that we supply the committee a statement as to the Department's discretion in dealing with a substance which is not now a food additive, under that amendment, but which may sometime in the future meet the statutory definition.

First, it should be made plain that the status of a substance generally recognized as safe by qualified scientists, or of a substance for which there is a prior sanction, cannot change without some new scientific evidence. A prior sanction cannot be withdrawn unless there is a factual basis for withdrawal. We have committed ourselves in our regulations, except in cases of imminent hazard to health, not to withdraw such a sanction without first providing a statement of the reasons for our actions. Where the withdrawal of the sanction involves a single party or a limited number of parties, we give our reasons for withdrawal directly to those interested in it. Where this cannot be done, the notice is published in the Federal Register explaining why withdrawal is necessary.

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[1] The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes. Nematodes are unsegmented round worms with elongated, fusiform, or sacklike bodies covered with cuticle, and inhabitating soil, water, plants, or plant parts. They are also known as nemas or eelworms. The term "plant regulator" means any substance or mixture of substances, intended through physiological action for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plan inoculants, and soil amendments. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

A substance generally recognized as safe by qualified experts is not subject to the food additives amendment so long as this general recognition of safety exists. Before the status of any such substance can be changed, there must be new scientific data which destroys this universally held belief as to its safety. Normally, this would require the completion of scientific studies and the publication of the results to demonstrate to the scientific community that its long-held beliefs are no longer warranted.

Second, even after a prior sanction has been withdrawn, or the status of a substance generally recognized as safe has been adequately drawn into question, the Department still has the burden of proceeding with enforcement action, if it wishes to require the removal of the substance from the interstate market. This means we must be prepared to prove by a preponderance of the evidence in a civil case, or beyond a reasonable doubt in a criminal case, that the substance meets the definition of a food additive, as it appears in section 201(s) of the Federal Food, Drug, and Cosmetic Act, and that the substance is not within the grandfather clause exemptions in that definition.

These features of the law, as a practical matter, make it extremely unlikely that the status of an exempt substance might be changed overnight. We consider it our responsibility to communicate any new facts about an exempt substance to the scientific community and to persons known to be directly interested in it. This would give advance notice of the pending change and an opportunity either to start the preparation of a food additive petition to establish safety or to supply controverting evidence with respect to the new scientific developments. When the new science finally reaches the point that the substance can no longer be generally recognized as safe, or establishes that the prior sanction was granted under a mistake as to the supposed safety of

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the article, the Department would have to classify it as a food additive. It would then be subject to seizure under the food additives amendment, until a regulation was promulgated permitting its safe use.

It is here that the discretion mentioned comes into play. The Department is not bound to proceed immediately against every adulterated article. The Supreme Court, in *United States v. Sullivan* (332 U.S. 689), has made it clear that the Department has been given broad discretion, "broad enough undoubtedly to enable [the Commissioner] to perform his duties fairly without wasting his efforts on what may be no more than technical infractions of the law." And the Court said that the scope of the law should not be narrowed by "envisioning extreme possible applications of its provisions."

More recently the Court, in an opinion by Chief Justice Warren in *Rathburn v. United States* (355 U.S. 107, 109), has said: "Every statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature."

Applying this rule of reason, and exercising the discretion referred to by the Supreme Court, the Department would be able to cope with the situation in which a long-used substance, either on the generally recognized as safe list or the subject of a prior sanction, is thrown into question under the food additives amendment. If the question arose simply because it was learned that some substance of unknown identity migrated from paperboard, the Department would not be compelled to immediately initiate a seizure campaign against all paperboard packaged food. But if it was learned that the migrant was one about which there was a serious question of safety, or one of unknown toxicity, the Department should have the authority to proceed in the public interest. This kind of action is permitted by the permanent provisions of the act.

Thus adequate flexibility in administration already exisits. We do not believe that the law should provide for extension for all substances that may at any time hereafter be found to be food additives. The purpose of the food additives amendment is to provide, after a reasonable transition period, that additives shall meet all requirements without exceptions. Moreover, the possibility that a substance thought not to be within the scope of the food additives amendment might at some future time turn out to be within its scope, is inherent in every provision of regulatory law, including other provisions of the Food, Drug, and Cosmetic Act, and it would manifestly be unsound to create possible loopholes relating to all these situations.

We recently reviewed this whole matter with representatives of the chemical industry and asked for any concrete examples that might justify a permanent provision in the law authorizing the Department to extend its effectiveness for 2 years or any other period, while new scientific problems arising with respect to an old additive were solved. No such examples could be given to us, and absent such an example we cannot recommend modification of the bill to authorize such an extension.

It may be that some substances which we have listed as generally recognized as safe, and some for which we have granted prior sanctions, will change in status with the emergence of new scientific knowledge. If they do, the new knowledge would have to establish a serious question of doubt of safety. In any such case, we believe the best course would be to remove the substance from the food supply while the issue of doubt was being removed rather than to approve [p. 5] a blanket extension. If the doubt were not a serious one, there would be no need for immediate action.

Additionally, as developed by some of the members of the committee during the hearings, the proposed deletion from subsection (c) of section 6 of the food additives amendment of the words "if such use was made of such additive before January 1, 1958" and substitution therefor of the words "if the substances making up such additive were similarly used before January 1, 1958" would weaken the present concept of the food additives amendment and of the additional extension authority contemplated in H.R. 3980. H.R. 3980 is intended to allow us to grant further extensions only for the exact uses that were made of a food additive before January 1, 1958. The amendment proposed by the American Paper and Pulp Association would greatly expand this authority and would authorize our Department to grant extensions for various uses of a given chemical so long as it had been used in a somewhat related manner before January 1, 1958. As I mentioned in my testimony, this requirement that a substance to be granted further extension must have been used prior to January 1, 1958, gives added support to the decisions of our scientists that further limited extension will be without undue risk to the public health; this added support would not exist for new uses of the same chemicals which had not been subjected to the test of time.

Sincerely yours,

GEO. P. LARRICK,
Commissioner of Food and Drugs.

REPORT OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

The report of the Secretary of Health, Education, and Welfare in support of this bill is printed as an appendix to this report.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE FOOD ADDITIVES AMENDMENT OF 1958

SEC. 6. (a) Except as provided in subsections (b) and (c) of this section, this Act shall take effect on the date of its enactment.

(b) Except as provided in subsection (c) of this section, section 3 of this Act shall take effect on the one hundred and eightieth day after the date of enactment of this Act.

(c) With respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958, section 3 of this Act shall take effect —

> (1) either (A) one year after the effective date established in subsection (b) of this section, or (B) at the end of such additional period (but not later than two years from such effective date established in subsection (b) as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the [p. 6] public health and that conditions exist which necessitate the prescribing of such an additional period, or
>
> (2) on the date on which an order with respect to such use under section 409 of the Federal Food, Drug, and Cosmetic Act becomes effective,

whichever date first occurs. *Whenever the Secretary has, pursuant to clause (1)(B) of this subsection, extended the effective date of section 3 of this Act to March 6, 1961, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1)(B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before*

March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 409. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

SECTION 3 OF THE NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

* * * * * * *

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

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whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective.

whichever date first occurs. *Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, nothwithstanding the provision to the contrary in such clause (1), further extend the expiration date applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.*

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APPENDIX

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
February 24, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H. R. 3980, a bill to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes.

This measure, to be known as the Food Additives Transitional Provisions Amendment of 1961, would amend existing law in two respects.

1. The principal purpose of this bill, which would be carried out by section 2 of the bill, is to remove—subject to appropriate safeguards and limitations—the time limit (March 5, 1961) which now exists on the authority of this Department to postpone, when necessary and consistent with public health protection, the effective date of the key operative provisions (sec. 3) of the Food Additives Amendment of 1958 (Public Law 85–929) to the Federal Food, Drug, and Cosmetic Act, as applied to established food additives (i.e., those in commercial use before January 1, 1958). The additional authority conferred by the bill would apply only where such further postponement beyond March 6, 1961, is necessary in order to permit the completion of necessary inquiries or studies started before March 6, 1960, and needed as a basis for determining whether, and if so under what tolerance limitations or other conditions, continued use of the additive should be permitted under the permanent provisions of Public Law 85-929 or whether that law applies to the substance involved at all.

This legislation is needed, both by us and by industry, because we shall not be able to process all food additive petitions under the Food Additives Amendment of 1958—where extensions have heretofore been granted—before March 5, 1961 (the limit of our present authority to grant extension of the transitional provisions), and because the affected industries will not be able to develop all necessary scientific data and petitions before that date even where appropriate action leading to such petitions was started in a timely manner.

2. In order to mesh with the above-mentioned amendment, the bill (sec. 3) would similarly modify the relevant transitional provision of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139, sec. 3(b)), which, as the indirect result of bringing certain agricultural chemicals—i.e., nematocides, plant regulators, defoliants, and desiccants

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—under the Federal Insecticide, Fungicide, and Rodenticide Act, had the effect of classifying such chemicals, about 30 in number, as "pesticide chemicals" under the Food, Drug, and Cosmetic Act, rather than as "food additives." (Pesticide chemical residues in or on raw agricultural commodities are not within the purview of the food additives amendment, but rather within the purview of the earlier pesticide chemicals amendment (Public Law 83–518) to the Food, Drug, and Cosmetic Act.) At present, this transitional provision of

Public Law 86-139 is in consonance with the transitional provisions of the Food Additives Amendment of 1958 (Public Law 85-929); this would remain true under the present bill.

A detailed explanation of the need for enactment of this bill is enclosed herewith.

We therefore, in view of the need for and urgency of these amendments, recommend prompt enactment of the bill.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ABRAHAM RIBICOFF, *Secretary.*

ADDITIONAL EXPLANATION OF PROPOSED "FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1961"

1. Section 2 of the bill

The Food Additives Amendment of 1958 (Public Law 85-929) amended the Federal Food, Drug, and Cosmetic Act so as to deem adulterated—and thus bar from interstate commerce—any so-called food additive, and food bearing or containing such an additive, unless the safety of the particular additive for its intended use had first been established to the satisfaction of the Department of Health, Education, and Welfare and the use of the additive complied with tolerance limitations or other conditions of safe use set forth in a safety-clearance regulation issued with respect to the additive by this Department.

Basically, Public Law 85-929 became effective on March 6, 1959 (180 days after the date of enactment). However, with "respect to any particular commercial use of a food additive, if such use was made of such additive before Jauary 1, 1958," the prohibitory provisions (sec. 3) of Public Law 85-929—i.e., those which had the effect of barring such food additives from the interstate market unless previously "cleared" by this Department—were to take effect only after a variable additional grace period or, if earlier, on the date of the establishment of an order passing upon the safety of such particular use of the additive. This grace period for such commercially established uses of food additives was, in general, 1 year beyond the basic effective date (i.e., March 5, 1960); however, the Secretary was empowered to extend it for as much as another year (i.e., to March 5, 1961) "on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such additional period" (sec. 6(c) of Public Law 85-929).

The purpose of these grace-period provisions was to permit an orderly adjustment, on the part of interested industries, as well as

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ourselves, to the new requirements imposed by Public Law 85–929 insofar as food additives established in commercial use before January 1, 1958, were concerned, and to permit the affected industries to develop the information and scientific data needed with respect to such additives without meanwhile discontinuing the manufacture, marketing, and use of such additives not prohibited under prior law. It was felt at the time that, in general, a deferred effective date of 18 months from the date of enactment (i.e., March 5, 1960) would suffice for this purpose but it was foreseen that in a number of cases the need for further time, particularly where additional scientific work was required, would arise; hence the Secretary was given the above-quoted flexible authority to allow further time in such cases on an ad hoc basis, provided that no undue risk to the public health was involved in such postponement. However, following the precedent of the pesticide chemicals amendment (Public Law 83–518), Public Law 85–929 set an outer limit (i.e., March 5, 1961) to such ad hoc postponements.

Under this authority, we have so far granted over 3,000 ad hoc postponements of the effective date of section 3 of the food additives amendment with respect to commercially established uses of food additives. The question whether Public Law 85–929 should be amended to enable us to grant further postponements beyond March 5, 1961, was raised in January 1960 in the course of our testimony before the House Committee on Interstate and Foreign Commerce on the Color Additive Amendments of 1960 (which became Public Law 86–618). We then expressed the view that consideration of this question was premature but that, if further experience should indicate that the existing authority was inadequate, we would submit an appropriate legislative proposal to Congress (p. 81, report of hearings on H.R. 7624).

Our experience since then indicates that the present cutoff date of March 5, 1961, will in fact operate unfairly in a number of situations in which available evidence indicates that continued use of an additive for limited time will be consistent with the protection of the public health, and the interested persons in industry have exercised due diligence in starting and pursuing the necessary scientific work, but that work cannot possibly be completed, let alone acted upon by us, before arrival of this cutoff date. The scientific problem is accentuated by the fact that the Food Additives Amendment of 1958 applies not only to substances directly and purposefully added to food but also to so-called incidental additives; that is, substances the intended use of which may reasonably be expected to result indirectly in their becoming a component or otherwise affecting the characteristics of food, though this is not the purpose for which they are employed.

For example, if a food wrapping material contains a chemical that "migrates" from the wrapper into the wrapped food the chemical is by definition a "food additive" unless generally recognized by experts as safe. In many cases, it was not known whether certain chemicals long used in food packaging materials were in fact "migratory" and thus "food additives" or, if so, how much of such chemicals migrated to and remained in or on the food. In such cases, therefore, scientific work was required to determine these facts. If the chemical was determined to be a "food additive" in this defined sense, full pharmacological studies on laboratory [p. 11] animals were then required to furnish the necessary scientific basis on which we would have to rest a determination of the long-term safety of the chemical for its use and of the precise conditions under which such use should be permitted.

Where the necessary scientific work in process involves long-term pharmacological studies, there is no way in which it can be expedited. For example, we know of a pharmocological study now underway by a responsible pharmacologist on a series of paper sizings, which will not be finished until about April 1962. Again, ongoing pharmacological industry studies on commercially established waxes for use on fruits, vegetables, and food containers are not expected to be completed by March 5, 1961.

Section 2 of the bill—which is the principal part of the bill—would therefore authorize us, in cases of this kind, to postpone the effective date of section 3 of the Food Additives Amendment of 1960 beyond March 5, 1961, to the extent that this is consistent with public health protection and is, in our judgment, necessary to complete such scientific work in good faith. (This approach is similar in concept to that recently adopted by Congress in the Color Additive Amendments of 1960 (Public Law 86–618)). Moreover, the bill would enable us to invoke this authority only where we have previously granted an extension to March 6, 1961 (the limit of our present authority), and necessary inquiries or studies were started before March 6, 1960, and since then pursued with reasonable diligence. (We do not believe that those who have food additive problems but have done little or nothing to solve them should receive special consideration.) Finally, as in the case of the Color Additive Amendments of 1960, the bill would authorize us to terminate a postponement at any time when we find that it should not have been granted in the first place, or that by reason of a change in circumstances the basis for the postponement no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to the postponement.

2. Section 3 of bill (re nematocides, plant regulators, defoliants, and desiccants)

Under the Food Additives Amendment of 1958, the definition of the term "food additive" expressly excludes "a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity." The reason for this exclusion is that the regulation of residues of "pesticide chemicals" in or on raw agricultural commodities was already adequately provided for from the public health standpoint by the pesticide chemicals amendment (Public Law 518, 83d Cong.) to the Federal Food, Drug, and Cosmetic Act. The term "pesticide chemical" is defined by that amendment as—

> any substance which * * * is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135–135(k) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

Originally, the Federal Insecticide, Fungicide, and Rodenticide Act, which established a registration system (administered by the [p. 12] Department of Agriculture) for "economic poisons," confined that term, basically, to insecticides, fungicides, rodenticides, and weed killers. The Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139) expanded the definition of "economic poison" in the Insecticide, Fungicide, and Rodenticide Act to include nematocides, and, also, any substance intended for use as a "plant regulator," defoliant, or desiccant. As a result, chemicals in these four categories, used in the production of agricultural crops, were no longer classified as "food additives" under the Federal Food, Drug, and Cosmetic Act but were automatically classified as "pesticide chemicals."

However, in order to permit an orderly transition for both the Government and industry, section 3 of Public Law 86–139 provided for transitional time periods, keyed to those specified in the Food Additives Amendment of 1958, during which (1) certain civil and criminal sanctions, etc., of the Insecticide, Fungicide, and Rodenticide Act would not apply, and (2) the adulteration provisions of the Food and Drug Act antedating the pesticide chemicals amendment would continue to apply, to certain of these products.

Thus, section 3(b) of Public Law 86–139 provides that, with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, "if such use was made of such substance before January 1, 1958," the old adulteration provisions of the Food and Drug Act shall continue to apply until March 5, 1960, or until the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe "on the basis of a finding that conditions exist which necessitate the prescribing of such additional period." (If, however, a tolerance or exemption therefrom under the pesticide chemicals amendment, i.e., sec. 408 of the Food and Drug Act, were sooner established for such use of the substance, this transitional period would end at that time with respect to such use.) The present bill would amend section 3(b) of Public Law 86–139 so as to enable the Secretary of Health, Education, and Welfare to postpone the cutoff date of March 5, 1961, on an ad hoc basis where necessary for completion of scientific work, subject to safeguards and limitations exactly parallel to those contained in section 2 of this bill which amend the transitional provisions of the Food Additives Amendment of 1958. This authority is needed in order to make possible the bona fide completion of needed scientific studies that cannot be completed by March 5, 1961.

Changes in existing law made by the bill to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety, and for other purposes" (existing law in which no changes are proposed are shown in roman; new matter is italicized):

1. FOOD ADDITIVES AMENDMENT OF 1958 (PUBLIC LAW 85–929)

SEC. 6. (a) Except as provided in subsections (b) and (c) of this section, this Act shall take effect on the date of its enactment.

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(b) Except as provided in subsection (c) of this section, section 3 of this Act shall take effect on the one hundred and eightieth day after the date of enactment of this Act.

(c) With respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958, section 3 of this Act shall take effect—

(1) either (A) one year after the effective date established in subsection (b) of this section, or (B) at the end of such additional period (but not later than two years from such

effective date established in subsection (b)) as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) on the date on which an order with respect to such use under section 409 of the Federal Food, Drug, and Cosmetic Act becomes effective,

whichever date first occurs. *Whenever the Secretary has, pursuant to clause (1)(B) of this subsection, extended the effective date of section 3 of this Act to March 6, 1961, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1)(B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 409. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.*

2. NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959 (PUBLIC LAW 86–139)

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be appplicable until—

[p. 14]

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities), shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs. *Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, notwithstanding the provision to the contrary in such clause (1), further extend the expiration date applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such* *section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.*

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1.1f (2) SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

S. REP. No. 86, 87th Cong., 1st Sess. (1961)

FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1961

MARCH 24, 1961—Ordered to be printed

Mr. HILL, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 3980]

The Committee on Labor and Public Welfare, to whom was referred the bill (H.R. 3980) to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

EXPLANATION

This bill would extend, from March 5, 1961, until June 30, 1964, the final effective dates of the Food Additives Amendment of 1958 (Public Law 85–929) and the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139). This extension would authorize the continued use of certain food additives and pesticide chemicals not covered by regulations issued by the Secretary of the Department of Health, Education, and Welfare, if the Secretary finds that such continued use would involve no undue risk to the public health, that such additives and pesticide chemicals were in commercial use prior to January 1, 1958, and that scientific investigations to determine safe levels of use are being pursued with due diligence.

Additional time is required by the Food and Drug Administration and the affected industries to complete and evaluate scientific investigations and studies needed to determine final assurance of safe use for about 30 pesticide chemicals and to determine whether some 3,000 substances are actually additives in or on a food and, [p. 1] if they are, what if any tolerance limitations or other conditions should be imposed on their use.

Under the bill, the Secretary of Health, Education, and Welfare could permit the continued use of the food additives or pesticide chemicals which have not been finally cleared for safety only in those instances where he has received satisfactory evidence, and has either authorized or has pending a request for authorization for the continued usage of these chemicals up to March 5, 1961, the limit of his authority, and he finds that the persons requesting the extensions have taken bona fide action before March 6, 1960, to investigate the chemicals concerned, that such investigations have continued with reasonable diligence, and that more time is necessary to complete them.

The Secretary would, at any time, be able to terminate any extension of time granted under this legislation if he finds that (1) it should not have been granted, (2) the basis for an extension no longer exists owing to a change in circumstances, or (3) there has been a failure to comply with any requirement for the submission of progress reports or with other conditions attached to the extension.

BACKGROUND

The Food Additives Amendment of 1958 (Public Law 85–929) amending the Federal Food, Drug, and Cosmetic Act became generally effective on March 5, 1959, 180 days after the date of enactment. However, with respect to any particular commercial use of a food additive before January 1, 1958, Public Law 85–929 authorized the Secretary of Health, Education, and Welfare to permit its continued commercial use while the industries concerned proceeded to develop all the necessary scientific information and data to petition the Secretary for safety clearance.

While it was felt at the time of enactment of this legislation that a deferred effective date of 18 months would be generally sufficient, it was realized that there would be some instances where a further extension of time might become necessary, particularly in cases where extensive scientific work would be required. Hence Public Law 85–929 authorized the Secretary to allow, in these instances, an extension ending not later than March 5, 1961, based on a finding that such an extension, in each instance, would involve no undue risk to the public health and that conditions exist which necessitate such action. Under this authority the Secretary has granted over 3,000 postponements.

The Department of Health, Education, and Welfare has advised the committee that the March 5, 1961, cutoff date on the authority to grant extensions would operate unfairly in a number of situations where the continued use of an additive beyond this date would be consistent with the protection of the public health and where the industry concerned has exercised due diligence in starting and pursuing the necessary scientific work but has been unable to complete the work and file a petition for safety clearance in time for the Secretary to act.

The committee believes that the extension of authority to the Secretary of Health, Education, and Welfare to June 30, 1964, will be sufficient to enable him and industry to complete most, if not all, of the work involved in the investigations already underway.

[p. 2]

The bill grants similar authority to the Secretary with respect to certain pesticide chemicals—about 30 in number—which were in the category of food additives before August 7, 1959, but became pesticide chemicals on that date by reason of a change in the definition of a term which encompasses such chemicals. This change was made by the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139), amending the Federal Insecticide, Fungicide, and Rodenticide Act which had the effect of reclassifying nematocides, plant regulators, defoliants, and desiccants from the category of food additives to the category of pesticide chemicals.[1]

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[1] The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes. Nematodes are unsegmented round worms with elongated, fusiform, or sacklike bodies covered with cuticle, and inhabitating soil, water, plants, or plant parts. They are also known as nemas or eelworms. The term "plant regulator" means any substance or mixture of substances, intended through physiological action for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abcission. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

DEPARTMENTAL REPORTS

A letter from the Department of Health, Education, and Welfare recommending enactment of H.R. 3980 as it passed the House was received. In addition, correspondence explaining the need for the bill and an explanation of its provisions was also transmitted from the Department of Health, Education, and Welfare.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, March 22, 1961.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your informal request for a report on H.R. 3980 (the proposed Food Additives Transitional Provisions Amendment of 1961), as passed by the House of Representatives.

The bill in its original form was identical with a departmental proposal submitted by the Department to this Congress and reaffirmed by us in a letter to you dated February 2, 1961.

Apart from a technical correction in the date referred to on page 2, line 3, of the bill—i.e., March 5, 1961, instead of the erroneous reference in the earlier bill to March 6, 1961—the changes in the bill made by the House are as follows:

1. We would be authorized under sections 2 and 3 of the bill to grant extensions of time beyond March 5, 1961, not only if we had previously granted an extension to that date but also if on that date a request for extension to March 5, 1961, was pending before us. This change was requested by us in the course of testimony before the House Committee on Interstate and Foreign Commerce because a person who had submitted a request for an extension to March 5 prior to that date should not be penalized by our inability or failure to act upon it by that time.

[p. 3]

2. The House inserted in sections 2 and 3 an ultimate cutoff date of June 30, 1964, beyond which extensions of time under the bill could not be granted. This provision is acceptable to us.

We therefore recommend favorable action on this urgent measure in its present form.

Sincerely yours,

ABRAHAM RIBICOFF, *Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, February 2, 1961.

HON. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On January 13, 1961, my predecessor in office, Secretary Flemming, transmitted to the President of the Senate a draft bill to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety", and for other purposes.

The draft bill has, I understand, been referred to your committee.

I am in full accord with this legislative proposal. In view of its urgency, it is my hope that your committee will take favorable action on the proposal as soon as possible.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ABRAHAM RIBICOFF, *Secretary*.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, January 13, 1961.

THE PRESIDENT OF THE U.S. SENATE,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed herewith a draft bill to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes. The bill may be referred to by the short title "Food Additives Transitional Provisions Amendment of 1961."

In view of its urgency, we respectfully request the prompt consideration and enactment of this bill. The bill would amend existing law in two respects.

(1) The principal purpose of this bill is to remove—subject to appropriate safeguards and limitations—the time limit (March 6, 1961) which now exists on the authority of this Department to postpone, when necessary and consistent with public-health protection, the effective date of the key operative provisions (sec. 3) of the Food Additives Amendment of 1958 (Public Law [p. 4] 85-929) to the Federal Food, Drug, and Cosmetic Act, as applied to established food additives (i.e., those in commercial use before January 1, 1958). The additional authority conferred by the bill would apply only where such further postponement beyond March 6, 1961, is necessary in order to permit the completion of necessary inquiries or studies started before March 6, 1960, and needed as a basis for determining whether, and if so under what tolerance limitations or other conditions, continued use of the additive should be permitted under the permanent provisions of Public Law 85-929 or whether that law applies to the substance involved at all.

This legislation is needed, both by us and by industry, because we shall not be able to process all food additive petitions under the Food Additives Amendment of 1958—where extensions have heretofore been granted—before March 6, 1961 (the limit of our present authority to grant extension of the transitional provisions), and because the affected industries will not be able to develop all necessary scientific data and petitions before that date even where appropriate action leading to such petitions was started in a timely manner.

(2) In order to mesh with the above-mentioned amendment, the bill (sec. 3) would similarly modify the relevant transitional provision of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86–139, sec. 3(b)), which, as the indirect result of bringing certain agricultural chemicals—i.e., nematocides, plant regulators, defoliants, and desiccants—under the Federal Insecticide, Fungicide, and Rodenticide Act, had the effect of classifying such chemicals, about 30 in number, as "pesticide chemicals" under the Food, Drug, and Cosmetic Act, rather than as "food additives." (Pesticide chemical residues in or on raw agricultural commodities are not within the purview of the food additives amendment, but rather within the purview of the earlier pesticide chemicals amendment (Public Law 83–518) to the Food, Drug, and Cosmetic Act.) At present, this transitional provision of Public Law 86–139 is in consonance with the transitional provisions of the Food Additives Amendment of 1958 (Public Law 85–929); this would remain true under the draft bill.

A more detailed explanation of the need for enactment of this bill is enclosed herewith. (In addition to the draft bill, there is also enclosed a comparative text of the relevant provisions of law, showing how they would be amended by the draft bill.)

We should, therefore, appreciate it if you would refer the enclosed draft bill to the appropriate committee for consideration.

The Bureau of the Budget advised on January 5, 1961, that there is no objection to the submission of this proposed legislation to the Congress for its consideration.

Sincerely yours,

ARTHUR S. FLEMMING, *Secretary.*

Enclosure.

ADDITIONAL EXPLANATION OF PROPOSED FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1961

1. Section 2 of bill

The Food Additives Amendment of 1958 (Public Law 85–929) amended the Federal Food, Drug, and Cosmetic Act so as to deem adulterated—and thus bar from interstate commerce—any so-called
[p. 5]
food additive, and food bearing or containing such an additive, unless the safety of the particular additive for its intended use had first been established to the satisfaction of the Department of Health, Education, and Welfare and the use of the additive complied with tolerance limitations or other conditions of safe use set forth in a safety-clearance regulation issued with respect to the additive by this Department.

Basically, Public Law 85–929 became effective on March 6, 1959 (180 days after the date of enactment). However, with "respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958," the prohibitory provisions (sec. 3) of Public Law 85–929—i.e., those which had the effect of barring such food additives from the interstate market unless previously "cleared" by this Department—were to take effect only after a variable additional grace period or, if earlier, on the date of the establishment of an order passing upon the safety of such particular use of the additive. This grace period for such commercially established uses of food additives was, in general, 1 year beyond the basic effective date (i.e., March 6, 1960); however, the Secretary was empowered to extend it for as much as another year (i.e., to March 6, 1961) "on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such additional period" (sec. 6(c) of Public Law 85–929).

The purpose of these grace-period provisions was to permit an orderly adjustment, on the part of interested industries, as well as ourselves, to the new requirements imposed by Public Law 85–929 insofar as food additives established in commercial use before January 1, 1958, were concerned, and to permit the affected industries to develop the information and scientific data needed with respect to such additives without meanwhile discontinuing the manufacture, marketing, and use of such additives not prohibited under prior law. It was felt at the time that, in general, a deferred effective date of 18 months from the date of enactment (i.e., March 6, 1960, would suffice for this purpose, but it was foreseen that in a number of cases the need for further time, particularly where additional scientific work was required, would arise; hence the Secretary was given the above-quoted flexible authority to allow further time in such cases on an ad hoc basis, provided that no undue risk to the public health was involved in such postponement. However, following the precedent of the pesticide chemicals amendment (Public Law 83–518), Public Law 85–929 set an outer limit (i.e., March 6, 1961) to such ad hoc postponements.

Under this authority, we have so far granted over 3,000 ad hoc postponements of the effective date of section 3 of the food additives amendment with respect to commercially established uses of food additives. The question whether Public Law 85–929 should be amended to enable us to grant further postponements beyond March 6, 1961, was raised in January 1960 in the course of our testimony before the House Committee on Interstate and Foreign Commerce on the Color Additive Amendments of 1960 (which became Public Law 86–618). We then expressed the view that consideration of this question was premature but that, if further experience should indicate that the existing authority was inadequate, we would submit an appropriate legislative proposal to Congress (p. 81, report of hearings on H.R. 7624).

[p. 6]

Our experience since then indicates that the present cutoff date of March 6, 1961, will in fact operate unfairly in a number of situations in which available evidence indicates that continued use of an additive for limited time will be consistent with the protection of the public health, and the interested persons in industry have exercised due diligence in starting and pursuing the necessary scientific work, but that work cannot possibly be completed, let alone acted upon by us, before arrival of this cutoff date. The scientific problem is accentuated by the fact that the Food Additives Amendment of 1958 applies not only to substances directly and purposefully added to food but also to so-called incidental additives, that is, substances the intended use of which may reasonably be expected to result indirectly in their becoming a component or otherwise affecting the characteristics of food, though this is not the purpose for which they are employed.

For example, if a food-wrapping material contains a chemical that "migrates" from the wrapper into the wrapped food the chemical is by definition a "food additive" unless generally recognized by experts as safe. In many cases, it was not known whether certain chemicals long used in food-packaging materials were in fact "migratory" and thus "food additives" or, if so, how much of such chemicals migrated to and remained in or on the food. In such cases, therefore, scientific work was required to determine these facts. If the chemical was determined to be a "food additive" in this defined sense, full pharmacological studies on laboratory animals were then required to furnish the necessary scientific basis on which we would have to rest a determination of the long-term safety of the chemical for its use and of the precise conditions under which such use should be permitted.

Where the necessary scientific work in process involves long-term pharmacological studies, there is no way in which it can be expedited. For example, we know of a pharmacological study now underway by a responsible pharmacologist on a series of paper sizings, which will not be finished until about April 1962. Again, ongoing pharmacological industry studies on commercially established waxes for use on fruits, vegetables, and food containers are not expected to be completed by March 6, 1961.

Section 2 of the enclosed draft bill—which is the principal part of the bill—would therefore authorize us, in cases of this kind, to postpone the effective date of section 3 of the Food Additives Amendment of 1960 beyond March 6, 1961, to the extent that this is consistent with public health protection and is, in our judgment, necessary to complete such scientific work in good faith. (This approach is similar in concept to that recently adopted by Congress in the Color Additive Amendments of 1960 (Public Law 86–618)). Moreover, the draft bill would enable us to invoke this authority only where we have previously granted an extension to March 6, 1961 (the limit of our present authority), and necessary inquiries or studies were started before March 6, 1960, and since then pursued with reasonable diligence. (We do not believe that those who have food additive problems but have done little or nothing to solve them should receive special consideration.) Finally, as in the case of the Color Additive Amendments of 1960, the draft bill would authorize us to terminate a postponement at any time when we find that it should not have been granted in the first place, or that by reason of a change in circumstances the basis for the postponement no longer exists, or that there has been a failure to [p. 7] comply with a requirement for submission of progress reports or with other conditions attached to the postponement.

2. Section 3 of bill (re nematocides, plant regulators, defoliants, and desiccants)

Under the Food Additives Amendment of 1958, the definition of the term "food additive" expressly excludes "a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity." The reason for this exclusion is that the regulation of residues of "pesticide chemicals" in or on raw agricultural commodities was already adequately provided for from the public-health standpoint by the pesticide chemicals amendment (Public Law 518, 83d Cong.) to the Federal Food, Drug, and Cosmetic Act. The term "pesticide chemical" is defined by that amendment as "any substance which * * * is an 'economic poison' within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135–135(k)) as now in force or as hereafter amended, and which is used in the production, storage or transportation of raw agricultural commodities."

Originally, the Federal Insecticide, Fungicide, and Rodenticide Act, which established a registration system (administered by the Department of Agriculture) for "economic poisons," confined that term, basically, to insecticides, fungicides, rodenticides, and weedkillers. The Nematocide, Plant Regulator, Defoliant, and Desiccant

Amendment of 1959 (Public Law 86–139) expanded the definition of "economic poison" in the Insecticide, Fungicide, and Rodenticide Act to include nematocides, and, also, any substance intended for use as a "plant regulator," defoliant, or desiccant. As a result, chemicals in these four categories, used in the production of agricultural crops, were no longer classified as "food additives" under the Federal Food, Drug, and Cosmetic Act but were automatically classified as "pesticide chemicals."

However, in order to permit an orderly transition for both the Government and industry, section 3 of Public Law 86–139 provided for transitional time periods, *keyed to those specified in the Food Additives Amendment of 1958*, during which (1) certain civil and criminal sanctions, etc., of the Insecticide, Fungicide, and Rodenticide Act would not apply, and (2) the adulteration provisions of the Food and Drug Act antedating the pesticide chemicals amendment would continue to appply, to certain of these products.

Thus, section 3(b) of Public Law 86–139 provides that, with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, "if such use was made of such substance before January 1, 1958," the old adulteration provisions of the Food and Drug Act shall continue to apply until March 5, 1960, or until the end of such additional period, *not beyond March 5, 1961*, as the Secretary of Health, Education, and Welfare may prescribe "on the basis of a finding that, conditions exist which necessitate the prescribing of such additional period." (If, however, a tolerance or exemption therefrom under the pesticide chemicals amendment, i.e., sec. 408 of the Food and Drug act, were sooner established for such use of the substance, this transitional period would end at that time [p. 8] with respect to such use.) The present draft bill would amend section 3(b) of Public Law 86–139 so to enable the Secretary of Health, Education, and Welfare to postpone the cutoff date of March 5, 1961, on an ad hoc basis where necessary for completion of scientific work, subject to safeguards and limitations exactly parallel to those contained in section 2 of this bill which amend the transitional provisions of the Food Additives Amendment of 1958. This authority is needed in order to make possible the bona fide completion of needed scientific studies that cannot be completed by March 5, 1961.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE FOOD ADDITIVES AMENDMENT OF 1958

* * * * * * *

SEC. 6. (a) Except as provided in subsections (b) and (c) of this section this Act shall take effect on the date of its enactment.

(b) Except as provided in subsection (c) of this section, section 3 of this Act shall take effect on the one hundred and eightieth day after the date of enactment of this Act.

(c) With respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958, section 3 of this Act shall take effect—

> (1) either (A) one year after the effective date established in subsection (b) of this section, or (B) at the end of such additional period (but not later than two years from such effective date established in subsection (b)) as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or
>
> (2) on the date on which an order with respect to such use under section 409 of the Federal Food, Drug, and Cosmetic Act becomes effective,

whichever date first occurs. *Whenever the Secretary has, pursuant to clause (1)(B) of this subsection, extended the effective date of section 3 of this Act to March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date, not beyond June 30, 1964, under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1)(B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's*

[p. 9]

judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, *the scientific investigations necessary as a basis for action under such section 409. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.*

SECTION 3 OF THE NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

* * * * * * *

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends, shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities), shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health,

Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs. *Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this*

[p. 11]

paragraph (b), prescribed an additional period expiring on March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, notwithstanding the provision to the contrary in such clause (1), further extend the expiration date, not beyond June 30, 1964, applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

[p. 12]

1.1f (3) CONGRESSIONAL RECORD, VOL. 107 (1961)

1.1f (3) (a) March 14: Amended and passed House, pp. 3924–3926

The resolution was agreed to.

Mr. HARRIS. Mr. Speaker, in view of the apparent unanimity on this legislation, I ask unanimous consent that the bill (H.R. 3980) to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes, be considered in the House as in Committee of the Whole.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food Additives Transitional Provisions Amendment of 1961".

SEC. 2. Subsection (c) of section 6 of the Food Additives Amendment of 1958 (Public Law 85-929, 72 Stat. 1784, 1788) is amended by inserting in such subsection, at the end thereof, the following: "Whenever the Secretary has, pursuant to clause (1)(B) of this subsection, extended the effective date of section 3 of this Act to March 6, 1961, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date, under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1)(B), he finds (i)

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that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 409. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension."

SEC. 3. Paragraph (b) of section 3 of the nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 288) is amended by inserting in such paragraph, at the end thereof, the following: "Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may, notwithstanding the provision to the contrary in such clause (1), further extend the expiration date, applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408. The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension."

Mr. HARRIS (during the reading of the bill). Mr. Speaker, I ask unanimous consent that the further reading of the bill be dispensed with, and that the bill be open for amendment and discussion.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendment: Page 2, line 3, strike out "March 6, 1961" and insert in lieu thereof "March 5, 1961."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 2, line 4, insert "or has on that date a request for such an extension pending before him."

The committee amendment was agreed to.

The Clerk read as follows:

Committee amendment: Page 2, line 8, strike the word "date" and insert "not beyond June 30, 1964."

Mr. HARRIS. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, H.R. 3980 was reported unanimously by the Committee on Interstate and Foreign Commerce, and it is urgently needed by the Federal Food and Drug Administration and many industries serving the American people.

The purpose of the bill, as is indicated by the amendment just read, is to continue until June 30, 1964, the authority of the Secretary of Health, Education, and Welfare, which expired on March 5, 1961, to permit the continued use of certain food additives and pesticide chemicals which have been in commercial use since January 1, 1958, until the necessary investigations and scientific studies now in progress by both the industries concerned and the Food and Drug Administration can be completed and regulations adopted to provide final assurance of the safe use of these additives and chemicals.

These investigations and studies are for the purpose of determining whether a large number of substances are actually additives in or on a food; and if they are, what, if any, tolerance limitations or other conditions should be imposed on their use in order to protect the public health.

Under the bill, the Secretary of Health, Education, and Welfare could permit the continued use of the food additives or pesticide chemicals which have not been finally cleared for safety, only if such additives and chemicals were in commercial use before January 1, 1958, and if he finds that such action would involve no undue risk to the public health and that conditions exist which necessitate the extension. Moreover, he could invoke this authority only in those instances where he has received satisfactory evidence, and has either authorized or has pending a request for authorization for the continued usage of these chemicals up to March 5, 1961, the limit of his authority, and he finds that the persons requesting the extensions have taken bona fide action before March 6, 1960, to investigate the chemicals concerned, that such investigations have continued with reasonable diligence, and that more time is necessary to complete them.

The Secretary would, at any time, be able to terminate any extension of time granted under this legislation if he finds that first, it should not have been granted, second, the basis for an extension no longer exists owing to a change in circumstances, or third, there has been a failure to comply with any requirement for the submission of progress reports or with other conditions attached to the extension.

As I have indicated, the legislation is needed both by the Secretary of Health, Education, and Welfare and by the industries concerned. The Secretary has informed the committee that the Food and Drug Administration has been unable to process before March 6, 1961, all the food additive and pesticide chemical petitions for safety clearance now pending. There are some 2,100 substances involved here, covering 3,000 different uses in food production, processing, or handling. Those not cleared would have to be removed from commercial use even though they have been in use since before January 1, 1958, unless this legislation is enacted. Moreover, the committee has been informed that the industries affected will not be able to develop before March 6, 1961, all the necessary scientific data and to file petitions on which the Secretary can act to clear many additives. The magnitude of the food additive problem is such that the original 2½-year transitional period has not been long enough.

The Food Additives Amendment of 1958—Public Law 85-929—amending the Federal Food, Drug, and Cosmetic Act became generally effective on March 5, 1959, 180 days after the date of enactment. However, with respect to any particular commercial use of a food additive before January 1, 1958, Public Law 85-929 authorized the Secretary of Health, Education, and Welfare to permit its continued commercial use while the industries concerned proceeded to develop all the necessary scientific information and data to petition the Secretary for safety clearance.

While it was felt at the time of enactment of this legislation that a deferred effective date of 18 months would be generally sufficient, it was realized that there would be some instances where a further extension of time might become necessary, particularly in cases where extensive scientific work would be required. Hence Public Law 85-929 authorized the Secretary to allow, in these instances, an extension ending not later than March 5, 1961, based on a finding that such an extension, in each instance, would involve no undue risk to the public health and that conditions exist which necessitate such action. Under this authority the Secretary has granted over 3,000 postponements.

The Secretary of Health, Education, and Welfare has advised the committee that the March 5, 1961, cutoff date on his authority to grant extensions would operate unfairly in a number of situations where the continued use of an additive beyond this date would be consistent with the protection of the public health and where the industry concerned has exercised due diligence in starting and pursuing the necessary scientific work but has been unable to complete the work and file a petition for safety clearance in time for the Secretary to act.

The committee believes that the extension of authority to the Secretary of Health, Education, and Welfare to June 30, 1964, will be sufficient to enable him and industry to complete the work involved in the investigations already underway.

The bill grants similar authority to the Secretary with respect to certain pesticide chemicals—about 30 in number—which were in the category of food additives before August 7, 1959, but became pesticide chemicals on that date by reason of a change in the definition of a term which encompasses such chemicals. This change was made [p. 3925] by the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959—Public Law 86-139—amending the Federal Insecticide, Fungicide, and Rodenticide Act which had the effect of reclassifying nematocides, plant regulators, defoliants, and desiccants from the category of food additives to the category of pesticide chemicals.

Mr. Speaker, you have heard the explanation given of some of the history of this legislation. The committee accepted the suggestion of the distinguished gentleman from New York [Mr. DELANEY], and provided a specific date by which the scientific investigations of these additives and chemicals should be completed and regulations adopted to provide final assurance of their safe use. This would be some 40 months hence. I might say that some wanted it to be open indefinitely. Others wanted a lesser time. The committee felt that in view of the information which we obtained from the hearings, at which time the Secretary of Health, Education, and Welfare, the Commissioner of the Food and Drug Administration, and a number of other witnesses testified, a final date of June 30, 1964, would be appropriate.

You will note that the bill extends this authority from March 5, 1961, which date has already passed. The committee obtained assurance from the Commissioner of Food and Drugs that as long as this bill was proceeding through the Congress, no action would be taken adversely insofar as these substances now under investigation are concerned. Consequently, it has worked out, I think, as satisfactorily as possible to all concerned.

I want to compliment the gentleman

from New York [Mr. DELANEY] for the magnificent work he has done in this field.

I urge the adoption of this bill.

Mr. SPRINGER. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois.

There was no objection.

Mr. SPRINGER. Mr. Speaker, the food additives transitional provisions amendment is technical in nature and probably will not be fully understood by the membership of the House. For this reason, I would like to talk briefly about the need for this extension.

This legislation is needed both by the Secretary of Health, Education, and Welfare, and by the industries concerned with the act. The Secretary came before the committee and told us that the Food and Drug Administration has been unable to process before March 6, 1961, all of the food additives and pesticide chemical petitions for safety clearance now pending. The original bill authorized the Secretary to permit continued pure commercial uses of food additives until the industries concerned proceeded to develop the necessary scientific information for safety clearance.

The Secretary felt the March 5, 1961, cutoff date would operate unfairly in many situations where the continued use of an additive would be consistent with the protection of the public health. There was considerable evidence by Members of Congress as well as technical evidence with reference to the extension of the cutoff date March 5, 1961. The Subcommittee on Health and Safety of the House Committee on Interstate and Foreign Commerce has followed carefully the progress of the Food and Drug Administration in enforcing the 1958 statute. It appeared to the subcommittee and also to the full committee that Food and Drug had been extremely careful in its hearings on petitions regarding food additives.

At the conclusion of all of our hearings, which were extended, the committee came unanimously to the belief that the law in question should be extended until June 30, 1964. It is the belief of the Secretary, as well as the Commissioner of Food and Drugs, that the extension is in the public interest. For this reason, the committee unanimously recommended that this legislation be extended. Mr. Speaker, in speaking for the minority, I am sure I express our position that it is in the public interest to extend the bill until June 30, 1964, in order to give the Food and Drug Administration a proper opportunity to complete examination of all of the petitions now pending for approval.

Mrs. SULLIVAN. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, as one of the original sponsors of the Food Additives Act of 1958, which was a very important new departure in the enforcement of the pure-food laws, I see no reason to oppose H.R. 3980 which has been reported by the Committee on Interstate and Foreign Commerce to provide additional time for the clearance of many additives now in use but whose safety has not been completely established.

Under the original act all of these additives in use before January 1, 1958, would have had to be cleared as to complete safety by March 6, 1961; that is, by last week. Because of the tremendous amount of scientific and technological work required on many of these additives, there are apparently thousands which have not completed the necessary testing. Unless we pass this bill today all of those chemicals could no longer be used in food, although, as the law provides, they would have been removed some time ago if there was any serious doubt or real evidence of danger.

I would object to this kind of an extension of time—the bill will permit this to go as long as June 30, 1964—I would object to that under normal circumstances if it was a case of manufacturers waiting until the last minute to begin the testing or failing to make any effort to comply with the law. But I am pleased to note that this bill applies only in those cases where the manufacturer had proceeded to make the proper tests and had applied to Food and Drug more than a year ago for an extension of time to continue tests then underway.

H.R. 3980 provides broad authority to the Food and Drug Administration to step in at any time to cancel the extension of time for the testing of any additive when the interests of the public indicate it should be withdrawn from the market as a food additive. So there is plenty of protection here for the consumer if enforcement is strict.

I would like to congratulate the Committee on Interstate and Foreign Commerce for refusing to make this extension bill a vehicle for weakening some of the controversial provisions of the Food Additives Act of 1958. I think their action on this matter should serve as a warning to those manufacturers who are going to be affected or are being affected by the Color Additives Act of 1960 that they had better begin now, if they have not already done so, to conduct the tests which are required to prove the safety of the coloring matter used in their products.

The SPEAKER pro tempore. The question is on the committee amendment.

The committee amendment was agreed to.

The SPEAKER pro tempore. The Clerk will report the next committee amendment:

The Clerk read as follows:

Page 3, line 10, after "1961," insert "or has on that date a request for such extension pending before him,".

The committee amendment was agreed to.

The SPEAKER pro tempore. The Clerk will report the next committee amendment.

The Clerk read as follows:

Page 3, line 14, after the word "date", insert ", not beyond June 30, 1964,".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

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1.1f (3) (b) March 27: Passed Senate, pp. 4874–4875

FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1961

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 74, H.R. 3980.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H.R. 3980) to amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to: and the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I have discussed this procedure with the minority leadership which is agreeable to having the bill considered at this time.

I ask unanimous consent, Mr. President, to have printed in the RECORD at this point an excerpt from the report of the Committee on Labor and Public

Welfare covering the proposal.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

* * * * *

[p. 4874]

The PRESIDING OFFICER. The bill is open to amendment.

Mr. JAVITS. Mr. President, may we have an explanation of the bill? The bill comes from the Committee on Labor and Public Welfare, a committee on which I serve.

Mr. MANSFIELD. The bill was reported unanimously by the committee. The bill would extend, from March 5, 1961, until June 30, 1964, the final effective dates of the Food Additives Amendment of 1958 (Public Law 85-929) and the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959—Public Law 86-139. This extension would authorize the continued use of certain food additives and pesticide chemicals not covered by regulations issued by the Secretary of the Department of Health, Education, and Welfare, if the Secretary finds that such continued use would involve no undue risk to the public health, that such additives and pesticide chemicals were in commercial use prior to January 1, 1958, and that scientific investigations to determine safe levels of use are being pursued with due diligence.

The bill has been requested by the administration, reported from the committee unanimously, and cleared with the minority leadership before being called up.

Mr. HILL. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. HILL. The bill was reported unanimously by the committee in the House of Representatives, and passed unanimously by the House of Representatives.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment, the question is on the third reading and passage of the bill.

The bill (H.R. 3980) was ordered to a third reading, was read the third time, and passed.

[p. 4875]

1.1g AMENDMENTS TO THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

May 12, 1964, P. L. 88-305,78 Stat. 190

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z) (2) (b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the esonomic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a. (2) (c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with

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this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The

Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling

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the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c. (4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may deem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the

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proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Approved May 12, 1964.

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1.1g (1) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 573, 88th Cong., 1st Sess. (1963)

REGISTRATION OF PESTICIDE CHEMICALS

OCTOBER 21 (legislative day, OCTOBER 15), 1963.—Ordered to be printed

Mr. JORDAN of North Carolina, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 1605]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 1605), to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with an amendment.

SHORT EXPLANATION

This bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act to —

(1) repeal the provision permitting registration of economic poisons under protest, and

(2) permit the Federal registration number to be shown on the label (and require it to be so shown if the Secretary of Agriculture so provides by regulation).

In lieu of protest registration, the bill makes various appeal procedures available where registration is refused or canceled. These include reference to an advisory committee for study and report, further determination by the Secretary, public hearings, a final order by the Secretary, and judicial review of such order.

Immediate suspension of registration is authorized when necessary to prevent an imminent hazard to the public, but the appeal procedures are then accorded to the applicant, including an expedited hearing.

The committee amendment does not change the purpose of the bill, but merely incorporates in it a number of technical corrections and procedural provisions suggested by the Department of Agriculture and industry representatives.

[p. 1]

NEED FOR LEGISLATION

The Federal Insecticide, Fungicide, and Rodenticide Act prohibits interstate commerce in "economic poisons," such as insecticides, herbicides, and plant regulators, unless they have been registered with the Secretary of Agriculture, are properly labeled, not adulterated or misbranded, and meet various other requirements designed to protect the public and assure it of safe and effective products. The act is enforced through criminal penalties under section 8 and seizures under section 9.

The Secretary is required, upon application, to register any economic poison if the poison, its labeling, and other material required to be submitted comply with the requirements of the act.

At present, however, the Secretary is also required to register under protest poisons which do not comply with the requirements of the act if, after he has advised the registrant that the poison does not meet the act's requirements, the registrant insists on registration. In such case the registrant is protected from the effects of failure to register, but not from penalties and seizure if the product is actually misbranded or otherwise out of compliance with the act. The maximum fine is $500 higher in some cases where the article has been registered under protest. The principal effect of registration under protest is to shift the burden of proof from the registrant to the Government. If the product is not registered, the penalty or seizure provisions can be applied on that ground. If it is registered under protest, the Government has the burden of proving that the product does not comply with the act.

Thus, at present, the Secretary can be required to register a product even though he is convinced that it is ineffective and dangerous to human life. He can proceed against it in such case only after it has moved in interstate commerce, and he then has the burden of proving that it violates the law. The bill would correct this situation and afford greater protection to the public by repealing the authority for registration under protest. In its place the bill provides that applicants dissatisfied with the Secretary's action in refusing or canceling registration may have recourse to advisory committee proceedings, public hearings, and eventually judicial review. Thus the bill affords adequate protection to the public, and protects applicants for registration from arbitrary or ill-advised action by the Department.

Section 2z(2)(b) of the act, at present, provides that any economic poison shall be misbranded, if its labeling bears any reference to registration under the act. The bill would permit the registration number to be shown and authorize the Secretary to require that it be shown. This would enable the user of the product to determine that it had been registered under the act and that the Department had made the necessary investigation and determined that it was truthfully labeled and complied with the requirements of the act. Use of the registration number should not create any inference that the product was recommended or otherwise sponsored by the Government.

The witness for the National Agricultural Chemicals Association at the committee's hearings on the bill testified that 47 States require registration of pesticides, generally following the pattern of the Federal act and regulations, and pointed out the difficulties that might be encountered if the labeling were required to carry 48 different registration numbers. This would, of course, be an [p. 2] unfortunate situation; and the committee assumes that the States would have no reason to, and would not, follow the provisions of the Federal law in this respect.

HEARINGS

Hearings were held on S. 1605 by the committee's Subcommittee on Agricultural Research and General Legislation on September 10. All witnesses favored the objectives of the bill. The Department of Agriculture and the National Agricultural Chemicals Association proposed a number of technical and procedural amendments, and these have been incorporated in substance in the committee amendment to the satisfaction of the Department and the association.

The Department of the Interior recommended two amendments dealing with fish and wildlife. One would have required the advisory committee to include on its membership a biologist familiar with the effects of pesticides on fish and wildlife. The other would have included hazard to useful animals and plants in the imminent hazard clause justifying summary suspension of registration. The committee felt that each of these amendments overemphasized this particular facet of the problem and might create doubts as to the consideration to be given to facets not specifically mentioned. In some cases, such as that of a household insecticide, the effect on fish and wildlife would not appear to be a particularly important consideration. Where it was an important consideration it should be given all the weight due it, and the committee would expect that to be done without special provision being included in the bill.

The Department of Health, Education, and Welfare recommended two amendments. One would make it clear that confidential data might be revealed to the heads of other Federal agencies consulted by the Secretary of Agriculture and persons authorized by such heads of other Federal agencies. The committee substantially revised and clarified the provisions of the bill dealing with confidential data so that the same rule applies to procedures following refusal or concellation of registration as applies prior to such refusal or cancellation. The only information required by this rule to be kept confidential is that relating to formulas. The committee amendment makes it clear that this information may be made available to other Federal agencies, and that it may also be revealed when necessary under the act at public hearings or in findings of fact issued by the Secretary.

The other amendment proposed by the Department of Health, Education, and Welfare would require copies of all applications to be transmitted to that Department, with an opinion of the Secretary of Agriculture as to whether use as directed or as reasonably foreseeable is likely to result in a residue on food and the amount thereof; prohibit registration until the Secretary of Health, Education, and Welfare had certified that no unsafe residue on food was likely; prohibit registration unless data was submitted to that Department showing the chemical identify of the poison, a method of determining residues on food if such residues might reasonably be expected, and results of investigations as to residues on food in such cases; and require cancellation or suspension of any registration if that Department lowered the residue tolerance below the expected residue or found that in actual use the poison left an unsafe residue. It would also provide procedures for the determinations [p. 3] by that Department similar to those for determinations by the Department of Agriculture, including separate, joint, or parallel advisory committees, separate, joint, or parallel public hearings, and so on. The committee felt that this duplication of administration and procedures was unnecessary and burdensome and would weaken the authority of the Secretary of Agriculture.

Under the Federal Food, Drug, and Cosmetic Act the Department of Health, Education, and Welfare has jurisdiction over adulterated foods moving in interstate commerce and sets the tolerances, if any, of residual economic poisons which may be permitted on raw agricultural commodities and the tolerances, if any, of other food additives which may be permitted on other food commodities. If no tolerance is established, the contaminated foods cannot move in interstate commerce. The Federal Food, Drug, and Cosmetic Act provides for advisory committees, hearings, and other procedures for the Department of Health, Education, and Welfare to reach its determinations. Under the Federal Insecticide, Fungicide, and Rodenticide Act, the Secretary of Agriculture must determine if the label contains directions adequate if complied with for the protection of the public and proper precautionary statements. If it would result in the production of food which would be prohibited by the Federal Food, Drug, and Cosmetic Act from being sold in interstate commerce, the public would not be protected, and the label could not be registered. The Secretary of Agriculture therefore must determine, among other matters, whether the economic poison will leave a residue in excess of the tolerance, if any, permitted by the Department of Health, Education, and Welfare and require the labeling to be changed as necessary in the light of any reduction in the permitted tolerance. Under the amendment proposed by the Department of Health, Education, and Welfare, that Department would also make this determination and would make it not only on the basis of the directions on the label or customary practice, but also on the basis of any reasonable likelihood of a residue under any reasonably foreseeable conditions of use. The amendment proposed by the Department of Health, Education, and Welfare would thus provide for a third separate set of procedures with its own advisory committee, hearings, and judicial review. There would be one procedure for the Department of Health, Education, and Welfare to determine permissible tolerances, another for the Department of Health, Education, and Welfare to determine the existence of residues under any foreseeable condition, and another for the Department of Agriculture to determine, among other matters, the existence of residues under reasonably expected usage. The committee did not include this amendment in the committee substitute.

SECTION BY SECTION EXPLANATION

The first section of the bill permits the labeling of an economic poison to carry its registration number under the act. At present section 2z(2)(b) of the act provides that an economic poison is misbranded if its label bears any reference to registration under the act. The first section of the bill amends section 2z(2)(b) to permit the registration number to be shown.

Section 2 provides that the label on an economic poison must show its registration number when required by regulation of the Secretary of Agriculture.

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Section 3 repeals the existing provision which permits registration of an economic poison under protest and provides instead for various appeals from the Secretary's original determination that registration should be refused or canceled. The new procedure is modeled after that contained in section 408 of the Federal Food, Drug, and Cosmetic Act for the determination of tolerances of pesticide chemicals on raw agricultural commodities. Under the new procedure whenever the Secretary refused registration or determined that registration should be canceled the applicant or registrant would be notified of that action and the reasons therefor. The applicant would then have 30 days to request reference to an advisory committee or to file objections and request a public hearing. The Secretary could also refer the matter to an advisory committee at any time on his own motion. Each advisory committee would consist of qualified experts selected by the National Academy of Sciences. The size of the committee would be determined by the Secretary and members would receive a reasonable per diem for their services, plus traveling and subsistence expenses, such costs being assessed against the party requesting reference to the advisory committee. The committee would submit recommendations to the Secretary within 60 days after reference, and the Secretary within 90 days thereafter would notify the applicant or registrant of his determination. The applicant would then have 60 days to file objections and request a public hearing. Following the hearing the Secretary would issue his order granting, denying, or canceling registration.

If necessary to prevent an imminent hazard to the public, the Secretary could suspend registration of an economic poison immediately and afford the registrant the opportunity for reference to an advisory committee and an expedited hearing following such suspension.

Section 4 adds a new section d to section 4 of the act to provide for judicial review of the Secretary's orders by petition to an appropriate U.S. court of appeals within 60 days after entry of the order. The court would then have exclusive jurisdiction to affirm or set aside the order. The Secretary's findings of fact would be sustained if supported by substantial evidence when considered on the record as a whole.

Section 5 strikes out the provision of section 8 for higher maximum fines and automatic termination of registration in the case of offenses of which the registrant has been warned at the time of registration under protest. In view of repeal by section 3 of the provision for registration under protest, the provision repealed by this section would no longer have any meaning.

Section 6 makes clarifying changes in sections 3a(1) and section 9a(1)(b) of the act, making it clear that those sections apply to an economic poison which is not registered, without regard to whether it may at some time have been registered. Section 6 substitutes "is not registered" for "has not been registered" in each section. Section 3a(1), as thus amended, prohibits interstate commerce in any economic poison which "is not registered," while section 9a(1)(b), as thus amended, provides for seizure of any economic poison which "is not registered."

Section 7 provides that the bill will become effective on enactment, and makes it clear that all existing registrations under protest will then terminate.

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DEPARTMENTAL REPORTS

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 12, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: We wish to thank you for your letter of May 28, 1963, giving us the opportunity to report on S. 1605, entitled "A bill to amend the Federal Insecticticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provisions would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of S. 1605 is to eliminate registrations under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made.

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: ", all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the [p. 6] Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the period: ", and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary*.

DEPARTMENT OF THE INTERIOR,
Washington, D.C., August 19, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR SENATOR ELLENDER: Your committee has requested this Department's report on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

We recommend the enactment of S. 1605, if amended as suggested herein.

This Department, in carrying out its responsibilities of administering our national parks and conserving fish and wildlife, is convinced of the need to provide a more effective means of controlling the use of chemicals potentially harmful to living man, domestic animals, and fish and wildlife. S. 1605 is designed to accomplish this by strengthening, the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.). The bill deletes the provisions of that act permitting registration of economic poisons under

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protest and establishes procedures for granting, denying, or canceling the registration or requiring the modification of the claims or the labeling by the applicant for registration.

In addition, S. 1605 establishes procedures for referring the Secretary's determination that registration of an economic poison should be refused, canceled, or the claims or labeling modified, to an advisory committee appointed by the Secretary, if the applicant or registrant requests this. We understand that the Department of Agriculture has suggested that provision also be made for referral to the committee on the Secretary's motion at any time. The committee then reviews the application and all relevant data, and presumably the determination of the Secretary, and makes its report and recommendations to the Secretary. The bill then provides for the Secretary to consider the committee's views and all other data and to make a new determination and issue a new order with a findings of fact. Following this, any aggrieved person may file objections and request and be granted a hearing for the purpose of receiving evidence relevant and material to the issues raised by the objections. After completion of the hearing the Secretary is again required to issue an order, based on the whole record, denying or canceling the registration or requiring a modification of the claims or the labeling. The order of the Secretary would then be subject to judicial review. While this Department does not object to these lengthy procedures, we believe that these procedures may prove to be too cumbersome and work a hardship on all those concerned.

One of the principal concerns of this Department is the effect of pesticides on fish and wildlife. These effects should be considered during the registration of these chemicals. S. 1605 provides an opportunity for a careful consideration of these effects by an advisory committee, in addition to the consideration given by the Department of Agriculture. Each advisory committee shall include experts selected by the National Academy of Sciences and one or more persons from land-grant colleges. Since the bill specifically provides for representatives of these colleges, we believe that a provision for including on such a committee one or more persons familiar with the effects of pesticides on fish and wildlife also is necessary. Accordingly, we recommend that page 3, line 11, of the bill be amended by striking the period after "colleges" and inserting a comma and the following clause: "and one or more biologists familiar with the effects of pesticides on fish and wildlife."

In the alternative, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists. We believe that the bill is broad enough to permit the National Academy of Sciences to include such representatives when necessary without specifically providing for such representation. Further, there may be occasions where their representation would serve no useful purpose.

Section 3 of the bill, among other things, authorizes the Secretary of Agriculture to order the suspension of the registration of an economic poison immediately, when he finds such action is necessary to prevent an imminent hazard to the public. This would be applicable to economic poisons now registered under the act. Procedures similar to those described for registering pesticides would be applicable to suspended registrations. We believe this [p. 8] provision is essential. However, we believe that the term "public" may not include fish and wildlife and other natural resources. Accordingly, we recommend that S. 1605 be amended on page 6, line 3, after the word "public," by inserting therein "including an imminent hazard to man, or animals or plants useful to man, including useful fish and wildlife,".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 29, 1963.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 6, 1963, for a report on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

The two objectives of this bill—objectives that we fully endorse—are stated in its title. Under present law, if the Secretary of Agriculture determines that an economic poison offered for registration under the Federal Insecticide, Fungicide, and Rodenticide Act would not comply with the various substantive requirements of the act, he still must, if the applicant insists, register the article though "under protest," even when the apparent violation is one that constitutes a hazard to the public health. Likewise, if an economic poison is regularly registered, the Secretary can convert the registration into a registration "under protest" but cannot cancel it outright. And since the label of the article bears no reference to registration—it is deemed misbranded if it does—purchasers are not apprised of its protested status. The holder of an article registered under protest does incur the risk of greater penalties and automatic termination of the registration in the event of conviction for a violation of the act, but in order to achieve this the Government would first have to carry the burden of proving beyond a reasonable doubt noncompliance with the act's substantive requirements, such as labeling giving adequate directions for use and adequate warnings to prevent injury. The burden should, we think, be on the manufacturer to show, before an economic poison may be registered, that the article may be safely and effectively used under the proposed labeling, so that, on the one hand, an article may be marketed in reliance on the registration so long as it is in effect and the article and its labeling are the same as that which has been registered and, on the other hand, deviation from the registered article or its labeling will per se constitute a violation.

The present bill would—in addition to authorizing the Secretary to require the label of the economic poison to bear a registration number—substitute for the present protest-registration procedure detailed provisions that would authorize the Secretary to refuse registration, or to cancel the registration (or require modification of the labeling), of an economic poison that he considers to be violative of the act, subject to the applicant's right to have the [p. 9] matter referred to an advisory committee of experts and to have a reconsidered decision of the Secretary after the report of the advisory committee has been obtained, and subject to the right of any person adversely affected by such a reconsidered decision to have an opportunity for public hearing and for judicial review of the Secretary's final decision on the basis of the hearing record. (Pending referral to an advisory committee and hearing, the Secretary would be empowered to suspend registration summarily if found necessary to prevent an imminent hazard to the public.)

These provisions would carry out procedurally two of the recommendations (i.e., recommendations D 1 and 2) in the recent report of the President's Science Advisory Committee on the "Use of Pesticides." We defer to the view of the Secretary of Agriculture as to whether these provisions are adequate, not only to do away with registration under protest but, as above suggested, to put the burden on the applicant to prove compliance with the substantive requirements of the act as to safety and effectiveness before the article may be registered, instead of placing the burden, in the last analysis, on the Secretary to prove that the article does not comply before he may refuse registration. We believe, however, that in any event certain amendments to the bill are needed from the point of view of the impact of the bill on this Department.

1. *Amendments to clarify, extend, and improve the relationship between the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons that may leave a residue in or on food*

The Food, Drug, and Cosmetic (FDC) Act provides, through various regulatory procedures, for premarketing clearance for safety, including establishment of safe tolerances, for extraneous substances in or on food (including feed) that are either intended as components of food or the use of which may reasonably be expected to result in leaving a residue in food. If such a substance is present in or on food at the time of, or subsequent to, introduction of the food in interstate commerce, the food is deemed unsafe, and hence adulterated, unless the use of the additive and the amount involved are sanctioned by a clearance regulation then in effect or are exempted by the act or regulation. Chemicals that are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) may be subject to one or two of these premarketing clearance procedures under the FDC Act, depending upon whether the chemical is used in the production, storage, or transportation of crops or other raw agricultural commodities—in which event it is referred to as a "pesticide chemical" subject to the clearance procedure of the Pesticide Chemicals Amendment—or is used otherwise, in which event it is, generally, subject to the clearance procedure of the Food Additives

Amendment of 1958 as a "food additive" (unless it is classified as a color additive).

In the case of "pesticide chemicals" as above defined, where in the opinion of the Department of Agriculture the proposed use of the chemical in accordance with label directions will leave a residue on a raw agricultural commodity, that Department will ordinarily delay registration until an applicable

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tolerance or exemption has been established under the FDC Act, on the ground that until the establishment of such a tolerance or exemption it cannot be determined whether there will be a violation of the provisions of FIFRA, which deem an economic poison misbranded if the labeling does not contain necessary directions for use "adequate for the protection of the public" or if the label does not contain necessary warning or caution statements "adequate to prevent injury to living man and other * * * animals * * *." (See regulations, 7 CFR 363.11.) We understand that extension of this procedure to situations where an economic poison offered for registration is intended for use in connection with food other than raw agricultural commodities is under consideration, though not as yet in effect. However, we assume that, under present law, the applicant could insist upon registration without awaiting a determination by this Department under the FDC Act, though in such cases he might have to accept a registration under protest.

Whatever the basis for the above-mentioned procedure under FIFRA in its present form, with its escape hatch of registration under protest, we seriously doubt that, under the amendments proposed by the bill, the Secretary of Agriculture would be authorized to delay his decision, initially or otherwise, on the ground that there has been no determination under the FDC Act. The provisions of the bill, with their built-in time limits, emphasize the desirability of expeditious procedure. Moreover, even if the Secretary should manage to defer his decision with respect to registration until a tolerance or exemption under the FDC Act has been granted or denied, this would apparently not, as the bill is written, require or authorize him to deny registration simply on the basis of the decision reached under the FDC Act; nor could the Secretary, after registration has been granted, cancel such registration simply on the basis of the decisions reached under the FDC Act, such as a modification of a previously established tolerance. The hearing provisions of the bill, particularly, seem to contemplate an independent administrative decision of the Secretary of Agriculture (subject to judicial review on the record) "based only on substantial evidence of record at such hearing" (including any report of an expert advisory committee appointed under the bill), and the grounds on which the decision would have to be based would be failure to comply with substantive provisions, including those relating to safety, of FIFRA rather than with applicable standards or regulations under the FDC Act. This involves the risk of duplicative, and even dichotomous, decisions of the two departments contrary to their mutual desire and contrary to the public interest.

The bill is therefore in need of amendment to prevent these results and to formalize in law, perfect, and extend to all foods the now-existing procedure applied under FIFRA with respect to economic poisons used in connection with raw agricultural commodities. This could be accomplished by amendments as follows:

(*a*) A requirement that an application for registration of an economic poison be accompanied by a satisfactory method of analysis which could be used to determine the presence or absence of residues in food, if the economic poison is intended for use in the production, handling, transportation, or storage of food, or for some other use that may reasonably be expected to result in leaving a residue in food when used as directed or under reasonably

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foreseeable conditions of use. Such an analytical method is needed both to determine whether the article should be registered on a "no residue" basis and, after such registration, whether its use bears out the expectation of "no residue."

(*b*) In the case of an economic poison which is intended for a use described in the preceding paragraph, a requirement that the application for registration be accompanied by full reports of adequate scientific investigations as to the amount of residues remaining in or on food.

(*c*) A requirement that an economic poison may not be registered unless and until this Department has certified a finding either (1) that there is no reasonable likelihood that the article will result in a residue in or on food (at or after the introduction of the food into interstate commerce), or (2) that the residue likely to result will not be deemed unsafe under the FDC Act (because of a tolerance or exemption we have established, or because of other facts stated in the certification). Provision should also be made for mandatory cancellation of the registration upon certification by this Department that the earlier findings are no longer applicable by reason of changes in the tolerance or exemption previously established or of other action under the FDC Act, or by reason of actual experience as to the residues which result from the use of the economic poison.

(*d*) The standard to be applied in determining whether a chemical should be registered is the amount of residue, if any, in or on food, that is likely to result if the chemical is used in accordance with directions or otherwise under reasonably foreseeable conditions of use. The standard to be applied in determining whether registration would be canceled is the amount of residue that is resulting from actual use of the chemical, either as directed, or under other conditions of actual use that may reasonably be expected to be followed in practice to a substantial extent.

We are enclosing draft language to carry out these recommendations.

2. *Amendments to make information available to other agencies concerned*

We believe that the confidentiality provisions of the bill in section 3 could be a bar to proper administration, and we therefore not only endorse the recommendation in the Secretary of Agriculture's comments dealing with the proposed amendments of lines 20 and 21 on page 5 of the bill, but also recommend that the law make a specific provision, along the lines of an amendment enclosed herewith, to make it clear that the Secretary of Agriculture is not barred from providing information submitted to him to any other Federal agency consulted.

Before closing this report, we should like to note that the President has asked the responsible agencies to implement the recommendations in the Science Advisory Committee's report, including in such implementation the preparation of proposals for submission by him to Congress.

With respect to economic poisons that leave no residue in or on food but have other implications with respect to public health, we are currently engaged in evaluating the statement in the report of that committee that "decisions on registration, clearly related to health, should be the responsibility of the Department of Health, Education, and Welfare," and the committee's recommendation B. 4, that the "Secretaries of Agriculture, Interior, and Health, Education, and Welfare review and define their roles in the registration of [p. 12] pesticides that are not present on food, but that may impinge on fish and wildlife or come into intimate contact with the public." Additional proposals for the amendment of FIFRA could eventuate in the light of these committee recommendations. We also intend to review the need for special controls over especially hazardous persistent economic poisons, whether used in connection with food or otherwise, and the question whether the availability of a new and less hazardous substance should be ground for changing the status of a previously registered article.

At this time, we recommend, for the above-stated reasons, the enactment of this bill, modified in accordance with the proposed amendments enclosed herewith which would carry out the specific recommendations of our report.

We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study in the executive branch and a final decision will be reached thereon as soon as possible.

Sincerely,

PHILIP H. DES MARAIS,
Acting Assistant Secretary.

PROPOSED AMENDMENTS TO THE BILL RE ECONOMIC POISONS LEAVING RESIDUES IN OR ON FOOD

1. On page 6, change lines 15 and 16 to read as follows: "tions d and e as subsections f and g, and by inserting before such redesignated subsections the following new subsections, as follows:."

2. On page 6, line 18, insert "subsection c of" after "under."

3. Strike out the closing quotation marks on page 8, line 6, and insert between lines 6 and 7 the following:

"e. (1) The provisions of this subsection shall apply notwithstanding any other provisions of this Act.

"(2) For the purposes of this section, the registration of an economic poison shall not be valid with respect to any change from the claims therefor or the labeling or composition thereof as described in the application upon which such registration is based, except upon the filing of a supplement to such application in accordance with such change and issuance of an order confirming such registration: *Provided*, That no such supplement need be filed with respect to a change that is not significant from the standpoint of safety or effectiveness or from the standpoint of the residue of the economic poison remaining in or on food. As used in the following paragraphs of this subsection, the term 'application for registration' includes a proposed supplement to an application on which a previous registration is based and a request pursuant to subsection g for continuation of a registration, and the terms 'register' and 'registration' include confirmation or continuation of registration pursuant to such a supplement or pursuant to such a request.

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"(3) A copy of every application for registration of an economic poison, and of any statement or other data filed in connection therewith, shall be transmitted by the Secretary to the Secretary of Health, Education, and Welfare, together with an opinion of the Secretary of Agriculture as to whether, on the basis of the data before him, such economic poison, when used as directed or otherwise under reasonably foreseeable conditions of use, is likely to result in a residue in or on food and, if so, the amount of such residue.

"(4) (A) An economic poison shall not be registered unless and until the Secretary of Health, Education, and Welfare has certified, on the basis of the data before him and after appropriate consideration of the opinion of the Secretary of Agriculture submitted under paragraph (3), that he finds (i) that such economic poison, when used in accordance with directions or otherwise under reasonably foreseeable conditions of use, is not likely to result in a residue in or on food (at or after the introduction thereof into interstate commerce), or (ii) that the residue likely to result from such use will, by reason of its conformance with a tolerance or exemption established under the Federal Food, Drug, and Cosmetic Act or by reason of any other facts found and stated in such certification, not be deemed unsafe within the meaning of section 406, 408, 409, or 706 of such Act.

"(B) Such certification shall in any event be refused unless the application and other data submitted to the Secretary of Health, Education, and Welfare under paragraph (3) or submitted to him directly by the applicant include the following:

"(i) Full data showing the chemical identity and composition of the economic poison.

"(ii) Practicable and reliable methods of examination for determining the amount of residue, if any, of such economic poison in or on food if such economic poison is intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, or is intended for any use that may reasonably be expected to result, directly or indirectly, in its leaving a residue in or on food when used as directed or otherwise under reasonably foreseeable conditions of use.

"(iii) Full reports of adequate investigations (made in accordance with the methods referred to in clause (ii) showing the amount of such residue, if any, remaining in or on food when such economic poison is used as directed or otherwise under reasonably foreseeable conditions of use, except that such investigations, if not made, may be dispensed with by such Secretary if such economic poison is not intended for a use described in clause (ii).

"(5) Whenever the Secretary of Health, Education, and Welfare certifies that he finds (A) that, by reason of action (specified in such certification) taken under section 406, 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act, as the case may be, [p. 14] the probable residue of an economic poison in or on food assumed as a basis for a prior registration of an economic poison would now be deemed unsafe within the meaning of such section, or (B) that the actual use of such economic poison as directed, or under other conditions of actual use that may reasonably be expected to continue to be followed in practice to a substantial extent, has resulted in leaving in or on food, at or after the introduction thereof in interstate commerce, a residue that for reasons stated in such certification is deemed unsafe within the meaning of any such section of such Act, the Secretary of Agriculture shall cancel such registration on thirty days' notice, except that, if the order of certification of the Secretary of Health, Education, and Welfare includes a finding of imminent hazard to the public health pursuant to clause (C) of the proviso to paragraph (6) of this subsection, such registration shall be suspended without prior notice pending final action of such Secretary.

(6) Certifications, or refusals of certification, of the Secretary of Health, Education, and Welfare under this subsection shall be made by order. The procedure for the issuance, amendment, or revocation of such orders, including opportunity for hearing on the record to any person adversely affected by the Secretary's action or proposed action, shall be prescribed by such Secretary by regulations and shall follow as nearly as practicable the procedure governing orders of the Secretary of Agriculture set forth in subsection c: *Provided*, That (A) the question whether or on what terms a tolerance, or exemption from the requirement of a tolerance, should be established, modified, or revoked under any provision of the Federal Food, Drug, and Cosmetic Act shall not be put in issue in any proceeding under this section; (B) the referral of a matter to an advisory committee shall not be mandatory on the Secretary of Health, Education, and Welfare unless requested by

the applicant or registrant; and (C) where such Secretary finds that there is an imminent hazard to the public health he may immediately make the certification provided for in paragraph (5), in which event he shall give prompt notice to the registrant and afford him the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this paragraph (6) and shall, after such opportunity, issue a final order confirming, modifying, or setting aside his earlier order. Final orders under this paragraph shall be subject to judicial review on the record in accordance with the procedure set forth in subsection d of this subsection, and for that purpose the term "Secretary" as used in subsection d shall mean the Secretary of Health, Education, and Welfare. Notwithstanding the foregoing provisions of this paragraph, the two Secretaries may, to the extent they deem it practicable and in the interest of efficiency and convenience of the parties, provide by joint or parallel regulations for joint hearings before them, in which event judicial review of such orders may be initiated by a single petition.

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"(7) As used in this subsection, the term 'residue' includes the breakdown products of an economic poison in foods; and the term 'food' means such term as defined in the Federal Food, Drug, and Cosmetic Act."

4. Change the two sentences beginning on page 5, line 16, to read as follows: "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary, by any other Federal agency officially consulted by the Secretary in connection therewith, and by such advisory committee until the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him. Until such action such data shall not be revealed to any person other than those authorized by the Secretary, or by an advisory committee in the carrying out of the official duties under this section, or by the head of such other Federal agency."

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for the other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SEC. 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pest as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

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c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematada, that is, unsegmented round worms with elongated, fusiform, or saclike bodies, covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

l. The term "weed" means any plant which grows where not wanted.

m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

o. The term "ingredient statement" means either—

> (1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or
>
> (2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except [p. 17] option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

p. The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

q. The term "inert ingredient" means an ingredient which is not active.

r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

s. The term "person" means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

u. The term "Secretary" means the Secretary of Agriculture.

v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

w. The term "label" means the written, printed, or graphic matter, on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

x. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies author-

ized by law to conduct research in the field of economic poisons.

y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

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z. The term "misbranded" shall apply—

(1) To any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act *other than the registration number assigned to the economic poison;*

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided,* That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use or;

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided,* That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

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PROHIBITED ACTS

SEC. 3. a. It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, and of the following:

(1) Any economic poison which [has not been] *is not* registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided,* That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the

retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand or trade-mark under which said article is sold; [and]

(c) the net weight or measure of the content: *Provided,* That the Secretary may permit reasonable variations[.]; *and*

(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act (unless the label shall bear, in addition to any other matter required by this Act—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc narsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided,* That the Secretary may exempt any economic poison to the extent that it is [p. 20] intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

REGISTRATION

SEC. 4. a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided,* That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the [registrant] *applicant for registration* shall file with the Secretary a statement including—

(1) the name and address of the [registrant] *applicant for registration* and the name and address of the person whose [p. 21] name will appear on the label, if other than the [registrant] *applicant for registration;*

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the [registrant] *applicant for registration* of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the [registrant] *applicant for registration* an opportunity to make the corrections necessary. [If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this Act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this Act.] *If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the* *article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional* [p. 22] *background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by* *the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration* [p. 23] *of any registration or application for registration under this section, the Secretary may consult with any other Federal agency. Notwithstanding the provisions of section 3(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may,* *when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.*

d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, *operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.*

[d.] *e.* Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

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[e.] *f.* The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6. a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this Act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe the regulations for the enforcement of section 10 of this Act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall

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be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United State attorney, with a copy of the results of the analysis or the examination of such article: *Provided,* That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

EXEMPTIONS

SEC. 7. a. The penalties provided for a violation of section 3a of this Act shall not apply to—

(1) any person who establishes a guaranty signed by, and

containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a(1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

b. Any person violating any provision other than section 3a(1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction for each subsequent offense be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and [p. 26] imprisonment: *Provided,* That an offense committed more than five years after the last previous conviction shall be considered a first offense [: *And provided further,* That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this Act, he shall in each instance upon conviction for an offense concerning which he had been so warned be fined not more than $1,000 or imprisonment for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically]. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9 a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it [has not been] *is not* registered pursuant to the provisions of section 4 of this Act;

(c) if it fails to bear on its label the information required by this Act; or

(d) if it is a white powder, economic poison, and is not colored as required under this Act; or

(2) in the case of a device if it is misbranded.

b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, [p. 27] and all such proceedings shall be at the suit of and in the name of the United States.

c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission of delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12. a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

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b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEPARABILITY

SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment; *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardships, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121–134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.

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1.1g (2) HOUSE COMMITTEE ON AGRICULTURE

H.R. REP. No. 1125, 88th Cong., 2d Sess. (1964)

REGISTRATION OF PESTICIDE CHEMICALS

FEBRUARY 3, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 9739]

The Committee on Agriculture, to whom was referred the bill (H.R. 9739) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

STATEMENT

The purpose of this bill is to end the practice of protest registration whereby the manufacturer of a pesticide can market a product despite Department of Agriculture doubts as to its effectiveness or safety. It also provides a complete appeal system whereby the applicant for registration can appeal the decision of the Department of Agriculture. This legislation was first introduced as H.R. 6828.

NEED FOR THE LEGISLATION

The Federal Insecticide, Fungicide, and Rodenticide Act prohibits interstate commerce in "economic poisons," such as insecticides, herbicides, and plant regulators, unless they have been registered with the Secretary of Agriculture, are properly labeled, not adulterated or misbranded, and meet various other requirements designed to protect the public and assure it of safe and effective products. The act is enforced through criminal penalties under section 8 and seizures under section 9.

The Secretary is required, upon application, to register any economic poison if the poison, its labeling, and other material required to be submitted comply with the requirements of the act.

[p. 1]

At present, however, the Secretary is also required to register; under protest poisons which do not comply with the requirements of the act if, after he has advised the registrant that the poison does not meet the act's requirements, the registrant insists on registration. In such case the registrant is protected from the effects of failure to register, but not from penalties and seizure if the product is actually misbranded or otherwise out of compliance with the act. The maximum fine is $500 higher in some cases where the article has been registered under protest. The principal effect of registration under protest is to shift the burden of proof from the registrant to the Government. If the product is not registered, the penalty or seizure provisions can be applied on that ground. If it is registered under protest, the Government has the burden of proving that the product does not comply with the act.

Thus, at present, the Secretary can be required to register a product even though he is convinced that it is ineffective and dangerous to human life. He can proceed against it in such case only after it has moved in interstate commerce, and he then has the burden of proving that it violates the law. The bill would correct this situation and afford greater protection to the public by repealing the authority for registration under protest. In its place the bill provides that applicants dissatisfied with the Secretary's action in refusing or canceling registration may have recourse to advisory committee proceedings, public hearings, and eventually judicial review. Thus the bill affords adequate protection to the public, and protects applicants for registration from arbitrary or ill-advised action by the Department.

Section 2z(2)(b) of the act, at present, provides that any economic poison shall be misbranded, if its labeling bears any reference to registration under the act. The bill would permit the registration number to be shown and authorize the Secretary to require that it be shown. This would enable the user of the product to determine that it had been registered under the act and that the Department had made the necessary investigation and determined that it was truthfully labeled and complied with the requirements of the act. Use of the registration number should not create any inference that the product was recommended or otherwise sponsored by the Government.

HEARINGS

Hearings were held on H.R. 6828, H.R. 6913, and H.R. 7336, all similar bills, on August 21 and 22, 1963, before the Departmental Oversight and Consumer Relations Subcommittee of the House Committee on Agriculture. Representatives of the chemical industry, farm organizations, and the legislative and executive branches of the Government appeared in behalf of the legislation.

Amendments to the legislation were recommended by the Department of Agriculture, the Department of Health, Education, and Welfare, and the Fish and Wildlife Service of the Department of Interior. These suggested amendments, along with proposals made by others, were considered by the subcommittee in executive session.

The full Committee on Agriculture in Executive Session considered the action of the subcommittee in connection with this legislation and also considered S. 1605, the Senate passed bill which had been referred to it. After a study of the recommended changes to S. 1605, the full committee recommended the introduction of a clean bill, H.R. 9739, containing substantially the provisions of S. 1605 together with the changes recommended by the House [p. 2] committee. H.R. 9739 was considered by the full committee in executive session on January 28, 1964, and voted to be reported to the House.

The differences in the Senate passed bill, S. 1605, and the House bill, H.R. 9739, are shown as follows:

(1) In order to shorten the time for appeal required in connec-

tion with denial of registration of a poison the Secretary has been denied the right on his own motion to submit the matter to an advisory committee. This was done by removing the sentence: "The Secretary, on his own motion, may at any time refer such a matter to an advisory committee." from page 3, line 11 of S. 1605. On page 6, line 7, the following language was added: "or with an advisory committee appointed as herein provided." This gives the Secretary the right to consult with an advisory committee during his initial consideration of an application for registration of a commercial poison, but not to refer the matter to an advisory committee after a final determination.

(2) On page 3, line 24, the following language has been added: "unless the committee shall recommend in favor of the petitioner or". This provision assesses cost against the Government if the advisory board rules in favor of the petitioner and against the decision made by the Secretary in connection with an application for registration of a poison. A technical change was made by striking language from lines 1 and 2 of page 4 of the Senate bill.

(3) On page 5, line 20, the following language has been added: "but not later than ninety days,". This language was added in order to set a definite time limitation upon the Secretary's reaching a final determination in connection with a hearing on an appeal of his order denying registration of a commercial poison.

(4) On page 5, line 23, the following language has been added: "or requiring modification of the claims or the labeling". This change was suggested by members of the committee to clarify the meaning of this provision.

(5) On page 6, line 14, the following sentence was inserted:

> All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee.

This language was added in order to further protect secret information concerning formulas and packaging methods from disclosure to unauthorized sources by the Advisory Committee appointed by the Secretary in connection with carrying out the provisions of this bill.

SECTION-BY-SECTION EXPLANATION

The first section of the bill permits the labeling of an economic poison to carry its registration number under the act. At present section 2z(2) (b) of the act provides that an economic poison is misbranded if its label bears any reference to registration under the act. The first section of the bill amends section 2z(2)(b) to permit the registration number to be shown.

Section 2 provides that the label on an economic poison must show its registration number when required by regulation of the Secretary of Agriculture.

[p. 3]

Section 3 repeals the existing provision which permits registration of an economic poison under protest and provides instead for various appeals from the Secretary's original determination that registration should be refused or canceled. The new procedure is modeled after that contained in section 408 of the Federal Food, Drug, and Cosmetic Act for the determination of tolerances of pesticide chemicals on raw agricultural commodities. Under the new procedure whenever the Secretary refused registration or determined that registration should be canceled the applicant or registrant would be notified of that action and the reasons therefor. The applicant would then have 30 days to request reference to an advisory committee or to file objections and request a public hearing. Each advisory committee would consist of qualified experts selected by the National Academy of Sciences. The size of the committee would be determined by the Secretary and members would receive a reasonable per diem for their services, plus traveling and subsistence expenses, such costs being assessed against the party requesting reference to the advisory committee. The committee would submit recommendations to the Secretary within 60 days after reference, and the Secretary within 90 days thereafter would notify the applicant or registrant of his determination. The applicant would then have 60 days to file objections and request a public hearing. Following the hearing the Secretary would issue his order granting, denying, or canceling registration, issuing such determination within 90 days of the hearing. The Secretary was given permission to select an advisory committee to consult with during the period of his initial determination of whether an economic poison should be granted a registration number or not.

In order to protect the formulas and packaging methods of the various applicants who apply for registration of a poison which they wish to market, language has been incorporated that will compel members of the advisory committee who advised the Secretary to keep all information divulged to them secret. There is language in the present act that forces such secrecy on all persons who come in contact with such information and it was only fair that these provisions should clearly be applicable to members of the advisory committee.

If necessary to prevent an imminent hazard to the public, the

Secretary could suspend registration of an economic poison immediately and afford the registrant the opportunity for reference to an advisory committee and an expedited hearing following such suspension.

Section 4 adds a new section d to section 4 of the act to provide for judicial review of the Secretary's orders by petition to an appropriate U.S. court of appeals within 60 days after entry of the order. The court would then have exclusive jurisdiction to affirm or set aside the order. The Secretary's findings of fact would be sustained if supported by substantial evidence when considered on the record as a whole.

Section 5 strikes out the provision of section 8 for higher maximum fines and automatic termination of registration in the case of offenses of which the registrant has been warned at the time of registration under protest. In view of repeal by section 3 of the provision for registration under protest, the provision repealed by this section would no longer have any meaning.

Section 6 makes clarifying changes in sections 3a(1) and section 9a(1)(b) of the act, making it clear that those sections apply to an [p. 4] economic poison which is not registered, without regard to whether it may at some time have been registered. Section 6 substitutes "is not registered" for "has not been registered" in each section. Section 3a(1), as thus amended, prohibits interstate commerce in any economic poison which "is not registered," while section 9a(1)(b), as thus amended, provides for seizure of any economic poison which "is not registered."

Section 7 provides that the bill will become effective on enactment, and makes it clear that all existing registrations under protest will then terminate.

DEPARTMENTAL REPORTS

The Department of Agriculture and the Department of Health, Education, and Welfare submitted reports on H.R. 6828 and related bills. These reports are applicable to H.R. 9739 and are submitted as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: We wish to thank you for your letter of June 19, 1963, giving us the opportunity to report on H.R. 6828, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provision would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of H.R. 6828 is to eliminate registration under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

[p. 5]

This Department recommends enactment of the bill if the following changes are made.

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: ", all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20–21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the periods: ". and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 21, 1963.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 19, 1963, for a report on H.R. 6828, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

[p. 6]

The two objectives of this bill—objectives that we fully endorse—are stated in its title. Under present law, if the Secretary of Agriculture determines that an economic poison offered for registration under the Federal Insecticide, Fungicide, and Rodenticide Act would not comply with the various substantive requirements of the act, he still must, if the applicant insists, register the article though "under protest," even when the apparent violation is one that constitutes a hazard to the public health. Likewise, if an economic poison is regularly registered, the Secretary can convert the registration into a registration "under protest" but cannot cancel it outright. And, since the label of the article bears no reference to registration—it is deemed misbranded if it does—purchasers are not apprised of its protested status. The holder of an article registered under protest does incur the risk of greater penalties and automatic termination of the registration in the event of conviction for a violation of the act, but in order to achieve this, the Government would first have to carry the burden of proving beyond a reasonable doubt noncompliance with the act's substantive requirements, such as labeling giving adequate directions for use and adequate warnings to prevent injury. The burden should, we think, be on the manufacturer to show, before an economic poison may be registered, that the article may be safely and effectively used under the proposed labeling, so that on the one hand an article may be marketed in reliance on the registration so long as it is in effect and the article and its labeling are the same as that which has been registered and, on the other hand, deviation from the registered article or its labeling will per se constitute a violation.

The present bill would—in addition to authorizing the Secretary to require the label of the economic poison to bear a registration number—substitute for the present protest-registration procedure detailed provisions that would authorize the Secretary to refuse registration, or to cancel the registration (or require modification of the labeling), of an economic poison that he considers to be violative of the act, subject to the applicant's right to have the matter referred to an advisory committee of experts and to have a reconsidered decision of the Secretary after the report of the advisory committee has been obtained, and subject to the right of any person adversely affected by such a reconsidered decision to have an opportunity for public hearing and for judicial review of the Secretary's final decision on the basis of the hearing record. (Pending referral to an advisory committee and hearing, the Secretary would be empowered to suspend registration summarily if found necessary to prevent an imminent hazard to the public.)

These provisions would carry out procedurally two of the recommendations (i.e., recommendations D. 1 and 2) in the recent report of the President's Science Advisory Committee on the "Use of Pesticides." We defer to the view of the Secretary of Agriculture as to whether these provisions are adequate, not only to do away with registration under protest but, as above suggested, to put the burden on the applicant to prove compliance with the substantive requirements of the act as to safety and effectiveness before the article may be registered, instead of placing the burden, in the last analysis, on the Secretary to prove that the article does not comply before he may refuse registration. We believe, however, that in any event certain amndments to the bill are needed from the point of view of the impact of the bill on this Department.

[p. 7]

1. Amendments to clarify, extend, and improve the relationship between the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons that may leave a residue in or on food

The Food, Drug, and Cosmetic Act provides, through various regulatory procedures, for premarketing clearance for safety, including establishment of safe tolerances, for extraneous substances in or on food (including feed) that are either intended as components of food or the use of which may reasonably be expected to result in leaving a residue in food. If such a substance is present in or on food at the time of, or subsequent to, introduction of the food in interstate commerce, the food is deemed unsafe, and hence adulterated, unless the use of the additive and the amount involved are sanctioned by a clearance regulation then in effect or are exempted by the act or regulation. Chemicals that are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act may be subject to one of two of these premarketing clearance procedures under the Food, Drug, and Cosmetic Act, depending upon whether the chemical is used in the production, storage, or transportation of crops or other raw agricultural commodities—in which event it is referred to as a "pesticide chemical" subject to the clearance procedure of the pesticide chemicals amendment—or is used otherwise, in which event it is, generally, subject to the clearance procedure of the Food Additives Amendment of 1958 as a "food additive" (unless it is classified as a color additive).

In the case of "pesticide chemicals" as above defined, where in the opinion of the Department of Agriculture the proposed use of the chemical in accordance with label directions will leave a residue on a raw agricultural commodity, that Department will ordinarily delay registration until an applicable tolerance or exemption has been established under the Food, Drug, and Cosmetic Act, on the ground that until the establishment of such a tolerance or exemption it cannot be determined whether there will be a violation of the provisions of Federal Insecticide, Fungicide, and Rodenticide Act, which deem an economic poison misbranded if the labeling does not contain necessary directions for use "adequate for the protection of the public" or if the label does not contain necessary warning or caution statements "adequate to prevent injury to living man and other * * * animals * * *." (See Regs., 7 CFR 363.11.) We understand that extension of this procedure to situations where an economic poison offered for registration is intended for use in connection with food other than raw agricultural commodities is under consideration, though not as yet in effect. However, we assume that, under present law, the applicant could insist upon registration without awaiting a determination by this Department under the Food, Drug, and Cosmetic Act, though in such cases he might have to accept a registration under protest.

Whatever the basis for the above-mentioned procedure under Federal Insecticide, Fungicide, and Rodenticide Act in its present form, with its escape hatch of registration under protest, we seriously doubt that, under the amendments proposed by the bill, the Secretary of Agriculture would be authorized to delay his decision, initially or otherwise, on the ground that there has been no determination under the Food, Drug, and Cosmetic Act. The provisions of

[p. 8]

the bill, with their built-in time limits, emphasize the desirability of expeditious procedure. Moreover, even if the Secretary should manage to defer his decision with respect to registration until a tolerance or exemption under the Food, Drug, and Cosmetic Act has been granted or denied, this would apparently not, as the bill is written, require or authorize him to deny registration simply on the basis of the decision reached under the Food, Drug, and Cosmetic Act; nor could the Secretary, after registration has been granted, cancel such registration simply on the basis of the decisions reached under the Food, Drug, and Cosmetic Act, such as a modification of a previously established tolerance. The hearing provisions of the bill, particularly, seem to contemplate an independent administrative decision of the Secretary of Agriculture (subject to judicial review on the record) "based only on substantial evidence of record at such hearing" (including any report of an expert advisory committee appointed under the bill), and the grounds on which the decision would have to be based would be failure to comply with substantive provisions, including those relating to safety, of Federal Insecticide, Fungicide, and Rodenticide Act rather than with applicable standards or regulations under the Food, Drug, and Cosmetic Act. This involves the risk of duplicative, and even dichotomous, decisions of the two departments contrary to their mutual desire and contrary to the public interest.

The bill is therefore in need of amendment to prevent these results and to formalize in law, perfect, and extend to all foods the now-existing procedure applied under Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons used in connection with raw agricultural commodities. This could be accomplished by amendments as follows:

(*a*) A requirement that an application for registration of an economic poison be accompanied by a satisfactory method of analysis which could be used to determine the presence or absence of residues in food, if the economic poison is intended for use in the production, handling, transportation, or storage of food, or for some other use that may reasonably be expected to result in leaving a residue in food when used as directed or under reasonably foreseeable conditions of use. Such an analytical method is needed both to determine whether the article should be registered on a "no residue" basis and, after such registration, whether its use bears out the expectation of "no residue."

(*b*) In the case of an economic poison which is intended for a use described in the preceding paragraph, a requirement that the application for registration be accompanied by full reports of adequate scientific investigations as to the amount of residues remaining in or on food.

(*c*) A requirement that an economic poison may not be registered unless and until this Department has certified a finding either (1) that there is no reasonable likelihood that the article will result in a residue in or on food (at or after the introduction of the food into interstate commerce), or (2) that the residue likely to result will not be deemed unsafe under the Food, Drug, and Cosmetic Act (because of a tolerance or exemption we have established, or because of other facts stated in the certification). Provision should also be made for mandatory cancellation of the registration upon certification by this Department that the earlier findings are no longer applicable by reason of changes in the tolerance or exemption previously established or of other action [p. 9] under the Food, Drug, and Cosmetic Act, or by reason of actual experience as to the residues which result from the use of the economic poison.

(*d*) The standard to be applied in determining whether a chemical should be registered is the amount of residue, if any, in or on food, that is likely to result if the chemical is used in accordance with directions or otherwise under reasonably foreseeable conditions of use. The standard to be applied in determining whether registration should be canceled is the amount of residue that is resulting from actual use of the chemical, either as directed, or under other conditions of actual use that may reasonably be expected to be followed in practice to a substantial extent.

We are enclosing draft language to carry out these recommendations.

2. *Amendments to make information available to other agencies concerned*

We believe that the confidentiality provisions of the bill in section 3 could be a bar to proper administration, and we therefore not only endorse the recommendation in the Secretary of Agriculture's comments dealing with the proposed amendments of lines 20 and 21 on page 5 of the bill, but also recommend that the law make a specific provision, along the lines of an amendment enclosed herewith, to make it clear that the Secretary of Agriculture is not barred from providing information submitted to him to any other Federal agency consulted.

Before closing this report, we should like to note that the President has asked the responsible agencies to implement the recommendations in the Science Advisory Committee's report, including in such implementation the preparation of proposals for submission by him to Congress.

With respect to economic poisons that leave no residue in or on food but have other implications with respect to public health, we are currently engaged in evaluating the statement in the report of that committee that "decisions on registration, clearly related to health, should be the responsibility of the Department of Health, Education, and Welfare," and the committee's recommendation B. 4, that the "Secretaries of Agriculture, Interior, and Health, Education, and Welfare review and define their roles in the registration of pesticides that are not present on food, but that may impinge on fish and wildlife or come into intimate contact with the public." Additional proposals for the amendment of FIFRA could eventuate in the light of these committee recommendations. We also intend to review the need for special controls over especially hazardous persistent economic poisons, whether used in connection with food or otherwise, and the question whether the availability of a new and less hazardous substance should be ground for changing the status of a previously registered article.

At this time, we recommend, for the above-stated reasons, the enactment of this bill, modified in accordance with the proposed amendments enclosed herewith which would carry out the specific recommendations of our report.

We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study in the executive branch and a final decision will be reached thereon as soon as possible.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

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PROPOSED AMENDMENTS TO THE BILL RE ECONOMIC POISONS LEAVING RESIDUES IN OR ON FOOD

1. On page 6, change lines 15 and 16 to read as follows: "tions d. and e. as subsections f. and g., and by inserting before such redesignated subsections the following new subsections, as follows:."

2. On page 6, line 18, insert "subsection c. of" after "under."

3. Strike out the closing quotation marks on page 8, line 6, and insert between lines 6 and 7 the following:

"e. (1) The provisions of this subsection shall apply notwithstanding any other provisions of this Act.

"(2) For the purposes of this section, the registration of an economic poison shall not be valid with respect to any change from the claims therefor or the labeling or composition thereof as described in the application upon which such registration is based, except upon the filing of a supplement to such application in accordance with such change and issuance of an order confirming such registration: *Provided*, That no such supplement need be filed with respect to a change that is not significant from the standpoint of safety or effectiveness or from the standpoint of the residue of the economic poison remaining in or on food. As used in the following paragraphs of this subsection, the term "application for registration" includes a proposed supplement to an application on which a previous registration is based and a request pursuant to subsection g. for continuation of a registration, and the terms "register" and "registration" include confirmation or continuation of registration pursuant to such a supplement or pursuant to such a request.

"(3) A copy of every application for registration of an economic poison, and of any statement or other data filed in connection therewith, shall be transmitted by the Secretary to the Secretary of Health, Education, and Welfare, together with an opinion of the Secretary of Agriculture as to whether, on the basis of the data before him, such economic poison, when used as directed or otherwise under reasonably foreseeable conditions of use, is likely to result in a residue in or on food and, if so, the amount of such residue.

"(4) (A) An economic poison shall not be registered unless and until the Secretary of Health, Education, and Welfare has certified, on the basis of the data before him and after appropriate consideration of the opinion of the Secretary of Agriculture submitted under paragraph (3), that he finds (i) that such economic poison, when used in accordance with directions or otherwise under reasonably foreseeable conditions of use, is not likely to result in a residue in or on food (at or after the introduction thereof into interstate commerce), or (ii) that the residue likely to result from such use will, by reason of its conformance with a tolerance or exemption established under the Federal Food, Drug, and Cosmetic Act or by reason of any other facts found and stated in such certification, not be deemed unsafe within the meaning of sections 406, 408, 409, or 706 of such Act.

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"(B) Such certification shall in any event be refused unless the application and other data submitted to the Secretary of Health, Education, and Welfare under paragraph (3) or submitted to him directly by the applicant include the following:

"(i) Full data showing the chemical identity and composition of the economic poison.

"(ii) Practicable and reliable methods of examination for determining the amount of residue, if any, of such economic poison in or on food if such economic poison is intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, or is intended for any use that may reasonably be expected to result, directly or indirectly, in its leaving a residue in or on food when used as directed or otherwise under reasonably foreseeable conditions of use.

"(iii) Full reports of adequate investigations (made in accordance with the methods referred to in clause (ii)) showing the amount of such residue, if any, remaining in or on food when such economic poison is used as directed or otherwise under reasonably foreseeable conditions of use, except that such investigations, if not made, may be dispensed with by such Secretary if such economic poison is not intended for a use described in clause (ii).

"(5) Whenever the Secretary of Health, Education, and Welfare certifies that he finds (A) that, by reason of action (specified in such certification) taken under sections 406, 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act, as the case may be, the probable residue of an economic poison in or on food assumed as a basis for a prior registration of an economic poison would now be deemed unsafe within the meaning of such section, or (B) that the actual use of such economic poison as directed, or under other conditions of actual use that may reasonably be expected to continue to be followed in practice to a substantial extent, has resulted in leaving in or on food, at or after the introduction thereof in interstate commerce, a residue that for reasons stated in such certification is deemed unsafe within the meaning of any such section of such Act, the Secretary of Agriculture shall cancel such registration on thirty days' notice, except that, if the order of certification of the Secretary of Health, Education, and Welfare includes a finding of imminent hazard to the public health pursuant to clause (C) of the proviso to paragraph (6) of this subsection, such registration shall be suspended without prior notice pending final action of such Secretary.

"(6) Certifications, or refusals of certification, of the Secretary of Health, Education, and Welfare under this subsection shall be made by order. The procedure for the issuance, amendment, or revocation of such orders, including opportunity for hearing on the record to any person adversely affected by the Secretary's action or proposed action, shall be prescribed by such Secretary by regulations and shall follow as nearly as practicable the procedure governing orders of the Secretary of Agriculture set forth in subsection c.: *Provided*, that (A) the question whether or on what terms a tolerance, or exemption from the requirement of a tolerance, should be established, modified, or revoked under any provision of the Federal Food, Drug, and Cosmetic Act shall not be put in issue in any proceeding under this section; (B) the referral of a matter [p. 12] to an advisory committee shall not be mandatory on the Secretary of Health, Education, and Welfare unless requested by the applicant or registrant; and (C) where such Secretary finds that there is an imminent hazard to the public health he may immediately make the certification provided for in paragraph (5), in which event he shall give prompt notice to the registrant and afford him the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this paragraph (6) and shall, after such opportunity, issue a final order confirming, modifying, or setting aside his earlier order. Final orders under this paragraph shall be subject to judicial review on the record in accordance with the procedure set forth in subsection d. of this subsection, and for that purpose the term "Secretary" as used in subsection d. shall mean the Secretary of Health, Education, and Welfare. Notwithstanding the foregoing provisions of this paragraph, the two Secretaries may, to the extent they deem it practicable and in the interest of efficiency and convenience of the parties, provide by joint or parallel regulations for joint hearings before them, in which event judicial review of such orders may be initiated by a single petition.

"(7) As used in this subsection, the term 'residue' includes the breakdown products of an economic poison in foods; and the term 'food' means such term as defined in the Federal Food, Drug, and Cosmetic Act."

4. Change the two sentences beginning on page 5, line 16, to read as follows: "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary, by any other Federal agency officially consulted by the Secretary in connection therewith, and by such advisory committee until the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him. Until such action such data shall not be revealed to any person other than those authorized by the Secretary, or by an advisory committee in the carrying out of the official duties under this section, or by the head of such other Federal agency."

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

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DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pest as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies, covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

l. The term "weed" means any plant which grows where not wanted.

m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, [p. 14] bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

o. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

p. The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will pre-

vent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

q. The term "inert ingredient" means an ingredient which is not active.

r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

s. The term "person" means any individal, partnership, association, corporation or any organized group of persons whether incorporated or not.

t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

u. The term "Secretary" means the Secretary of Agriculture.

v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

w. The term "label" means the written, printed, or graphic matter, on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

x. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current [p. 15] official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

z. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act *other than the registration number assigned to the economic poison;*

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided,* That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use or;

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

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(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

PROHIBITED ACTS

SEC. 3. a. It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which [has not been] *is not* registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold; [and]

(c) the net weight or measure of the content: *Provided,* That the Secretary may permit reasonable variations [.]*; and*

(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly [p. 17] colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided,* That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic

poison in a manner that may defeat the purpose of this Act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

REGISTRATION

SEC. 4 a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and

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the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the [registrant] *applicant for registration* shall file with the Secretary a statement including—

(1) the name and address of the [registrant] *applicant for registration* and the name and address of the person whose name will appear on the label, if other than the [registrant] *applicant for registration;*

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the [registrant] *applicant for registration* of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the [registrant] *applicant for registration* an opportunity to make the corrections necessary. [If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this Act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this Act.] *If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons* *therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary correc-* [p. 19] *tions; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and* *recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration, or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommen-* [p. 20] *dations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of the petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic* *poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.*

d. In case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

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[d.] *e.* Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

[e.] *f.* The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device; including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6 a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of sub-

stances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a(4) of this Act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe the regulations for the enforcement of section 10 of this Act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this [p. 22] Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings; and if in the opinion of the Secretary it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided,* That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

EXEMPTIONS

Sec. 7a. The penalties provided for a violation of section 3a of this Act shall not apply to—

(1) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the

time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a(1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

b. Any person violating any provision other than section 3a(1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on [p. 23] conviction for each subsequent offense be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided*, That an offense committed more than five years after the last previous conviction shall be considered a first offense [: *And provided further*, That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this Act, he shall in each instance upon conviction for an offense concerning which he had been so warned be fined not more than $1,000 or imprisonment for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically]. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9 a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia, or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it [has not been] is *not* registered pursuant to the provisions of section 4 of this Act;

(c) if it fails to bear on its label the information required by this Act; or

(d) if it is a white powder, economic poison, and is not colored as required under this Act; or

(2) in the case of a device if it is misbranded.

b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided,* That upon payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near [p. 24] as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanding, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission of delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12 a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

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b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEPARABILITY

SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment; *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardships, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121–134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.

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1.1g (3) CONGRESSIONAL RECORD

1.1g (3) (a) Vol. 109 (1963), Oct. 22: Considered and passed Senate, pp. 20077–20081

AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate [p. 2077] proceed to the consideration of Calendar No. 551, S. 1605.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture and Forestry with an amendment to strike out all after the enacting clause and insert:

That section 2.z.(2) (b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z) (2) (b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2) (c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2) (c), a new provision reading as follows: "(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.".

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendation, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167: 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 13 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, [p. 2078] and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mr. ELLENDER. Mr. President, the bill was reported unanimously by the Committee on Agriculture and Forestry. There was no objection from the producers of insecticides or from farm organizations.

This bill makes two changes in the Federal Insecticide, Fungicide, and Rodenticide Act. The first change deals with registration of economic poisons under protest. The bill repeals the existing provision permitting such registration. In the future an economic poison would have to be determined to be in compliance with the act or it could not be registered and marketed in interstate commerce.

The second change deals with showing the registration number of an economic poison on its label. At present an economic poison is considered misbranded if its label gives the slightest intimation that the product has been registered under the act. The bill would permit the registration number to be shown on the label; and, if the Secretary of Agriculture should so prescribe by regulation, the registration number would be required to be shown on the label.

The Federal Insecticide, Fungicide, and Rodenticide Act is designed to assure the public of safe and effective pesticides, or, as the act describes them, "economic poisons." Economic poisons are defined to include such preparations as insecticides, herbicides, plant regulators, defoliants, desiccants, and similar products. The act requires that they be honestly labeled, not adulterated, and meet various other requirements.

All economic poisons are required to be registered with the Secretary of Agriculture, and the Secretary at the time of registration makes a determination as to whether the product, its label, and the other materials required to be submitted at the time of registration comply with the requirements of the act. If the Secretary determines that the product and the label do not comply with the requirements of the act, he so advises the applicant for registration.

Under the existing law the registrant then has two alternatives. He may elect not to market the product, or he may request that the product be registered under protest. If the product actually does not comply with the act's requirements, registration does not protect the registrant from penalties and from seizure of the product. The applicant who registers under protest, having been advised that the Secretary considers his product as not complying with the act, may expect prosecution or seizure of his product when he begins marketing it in interstate commerce. In the case of such prosecution or seizure, the burden of proof rests upon the Government to prove that the product does not comply with the act. There have been very few products registered under protest, but protest registration does leave the door open to the marketing of a product which might be extremely dangerous to the public.

The bill therefore repeals the provision for registration under protest. If the product does not comply with the terms of the act it cannot be registered; and if it is not registered it cannot be marketed without being subject to the penalty and seizure provisions of the law. No further showing that it is misbranded, adulterated, or otherwise in violation of the act is necessary. The burden of proof is with the applicant at the time of registration to show that the product complies with the act.

At present registration under protest provides a means by which an applicant for registration may appeal from a decision of the Secretary with which he disagrees. However, in order to take this appeal, he must take actions which subject him to penalties, the product to seizure, and the public to possible danger if the Secretary's determination should prove to be correct.

In lieu of this unsatisfactory type of appeal, the bill provides for administrative and judicial appeals. An applicant or registrant who disagrees with the Secretary's determination to refuse or cancel registration may request that the matter be referred to an advisory committee which would consider the matter and make recommendations which the Secretary could follow or not as he saw fit. The bill also permits the applicant or registrant to file objections and request public hearings, either after the Secretary has received and acted upon the advisory committee's recommendations, or without having gone through the advisory committee procedure. The hearing would be followed by a final order of the Secretary, which would then be subject to judicial review.

The bill therefore provides better procedures to protect the applicant or registrant from any arbitrary determination by the Secretary of Agriculture than does the existing law. In order that these appeal procedures may not cause delays in cases where the public might be endangered, the bill provides for suspension of registration immediately if necessary to prevent imminent hazards to the public. Such suspension could then be followed by the various appeal procedures.

At present the law prohibits the label from showing that the product has been registered under the act. This information would be useful to a prospective user of the product, since it provides some assurance that the Secretary has investigated the product and that it is properly labeled. If the product is to be used in the production of agricultural commodities, the fact that it has been registered provides some assurance that if the directions on the label are followed, the commodities produced will meet the requirements of the Federal Food, Drug, and Cosmetic Act insofar as possible residues of this particular poison are concerned. The bill therefore permits the label to show the product's registration number; and requires it to be shown if the Secretary should so prescribe.

The committee held hearings on this bill, and all witnesses favored its objectives. The committee amendment modifies the bill only to the extent of including a number of technical and procedural suggestions of the industry and the Department of Agriculture.

Mr. RIBICOFF. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield.

Mr. RIBICOFF. On behalf of the subcommittee, I express our gratitude to the Senator from Louisiana and the members of his committee for reporting the measure.

The Senator from Kansas [Mr. PEARSON], the Senator from New York [Mr. JAVITS], the Senator from Rhode Island [Mr. PELL], and I held hearings on the bill. The hearings disclosed the loophole which is sought to be closed by the bill. It is most important for the health and welfare of the people.

Mr. GORE. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I yield.

Mr. GORE. Does the bill relate strictly to labeling, numbering, and identification; or does it go further and propose, as I hope would be the case, a genuine study of the possible health hazards involved in the use of insecticides?

Mr. RIBICOFF. The subcommittee conducted long and careful hearings on the subject. As we discovered a particular loophole, we made recommendations to the appropriate committee.

The first thing we discovered was that certain pesticides were being placed on the market after they had been rejected by the Secretary of Agriculture, merely by the filing of a protest registration. This was a bad loophole in the law, because it allowed toxic pesticides to be placed on the market. We therefore called the attention of the Committee on Agriculture to this situation.

The bill would close such loopholes, so that if a pesticide is declared to be unsafe, the manufacturer will not be able to market it merely by filing a protest registration.

Mr. GORE. As I understand, the bill is partially the result of a thorough study which the committee has made.

Mr. RIBICOFF. That is correct. We shall continue to investigate thoroughly every phase of the problem. As we reach our conclusions, we will from time to time make recommendations to Congress. This bill is one of the results of our study. But this measure is of such clear importance and solves such a specific problem that it is well we act on it promptly. I hope the House of Representatives will complete action at an early date.

Mr. President, a quarter of a century ago there were fewer than six primary chemicals available for use as pesticides. Today over 50,000 formulations based on more than 500 individual chemical compounds are registered with the Department of Agriculture.

In this wide range of complex products—many with similar properties but each one differing from the other in some important aspect—there is included a great variety of toxicants. They vary from insecticides for corn borers to repellants for mosquitoes, from nematocides for tobacco to ant and cockroach killers, from herbicides for lawns to killers of rats and mice, [p. 20079] from fungicides for wood to insecticides for malaria mosquitoes.

The United States produces and uses more of these products than any other nation. And the trend is continuing upward. In 1954 over 400 million pounds of synthetic organic pesticides valued at something over $150 million were produced. Preliminary 1962 figures show production exceeding 700 million pounds valued at over $400 million. By 1975 it is estimated pesticide sales alone will reach the $2 billion mark.

Despite the huge increase in these materials since the end of World War II there has been no basic revision of the pesticide regulation laws administered by U.S. Department of Agriculture since that time.

According to the Director of the Pesticides Regulation Division of the Department of Agriculture, the 1947 act—known as the Federal Insecticide, Fungicide, and Rodenticide Act—is "basically a labeling law which protects the public by requiring that the label be adequate to protect the public, when followed." The key protective feature of the law—as pointed out frequently by Department of Agriculture officials over the years—was that all pesticides were required to be registered with the Secretary of Agriculture before they could be sold in interstate commerce. Registration, we have been told, meant that the product was effective and safe when used as directed.

Yet despite such assurance there existed from the beginning a loophole in the law. Secretary of Agriculture Freeman described this gap to our Subcommittee on Reorganization last May during our hearing on the use of pesticides as follows:

> One provision of the Insecticide, Fungicide, and Rodenticide Act, in our opinion, subjects the public to danger. If the Department denies registration, the law now permits a manufacturer to register his product "under protest." The product can then be sold to the public until we are able to develop performance and toxicity records and take legal action to remove it from the market.
>
> This is a loophole in the law that should be closed. We believe the act should be amended to do away with the provision that permits registration "under protest," and our recommendations to this effect are now under consideration in the executive branch.

Actually these recommendations had been under consideration—we learned—since 1960 but action in the executive branch was slow. Instead of waiting for further consideration, I introduced along with Senators PEARSON, PELL, and JAVITS the bill now before us.

There was no need to wait for further consideration. The facts were obvious and the need was clear.

Over Government objection and despite doubts as to a product's safety or effectiveness, a manufacturer could, if he chose, market his product "under protest" and the registration would be considered perfectly valid—with nothing on the label to differentiate it from other products properly registered. For 4 years this problem has remained unresolved. That is why I introduced S. 1605 4 days after Secretary Freeman's testimony.

This bill closes a loophole that posed a constant threat to the health and safety of the American people. Any product could be sold to the public even though evidence of its safety was completely lacking. This bill ends that possibility once and for all.

Fortunately, we have been able to avoid a national tragedy while this gap in consumer protection remained in the law. Only a very few products, out of the thousands registered, have been protest-registered over the past 16 years. Even these have been too many and it is time to close the gap.

Despite our relatively good fortune in the past, the danger of an unsafe product coming on the market is always with us under existing law. Let me give you a few examples of what I mean.

A number of manufacturers have submitted for registration under the Federal Insecticide, Fungicide, and Rodenticide Act labeling for chlordane aerosol formulations for household use. These were intended for use in controlling various household pests, including flies and mosquitoes. Registration was refused for products bearing directions for use which would result in an aerosol dispersal of chlordane. USDA pharmacologists did not consider such a use to be safe. Their judgment was based partly on the findings of the Food and Drug Administration, which showed that chlordane formulations in some cases could produce skin and eye irritation. Since aerosol uses risk contact of the spray with skin and eyes, such usage could not be accepted and registration was refused. The Public Health Service was asked to review this matter and endorsed the decision.

On a number of occasions registration of floor waxes containing dieldrin has been requested. Such products were intended for use in controlling various household insects. USDA pharmacologists did not consider complete floor coverage with such waxes to be safe, and refused to register them. Dieldrin formulas for household use required directions which would not exceed the patterns set forth in USDA interpretation 19. It was concluded that no directions could be written which would meet the requirements of this interpretation, and still provide a useful floor wax.

USDA was asked by one firm to consider registration of a parathion formulation for use in rodent control. Another firm asked USDA about the possibility of obtaining registration for a parathion product for household use, and for the control of fleas and other pet insect parasites. These firms were informed that such uses were unacceptable due to the high toxicity of parathion. USDA toxicological experience and the scientific literature indicated that such use would be hazardous and would risk injury or death. Since there was much more than a "reasonable doubt" as to the propriety of the use, registration was denied.

As a result of cases of methemoglobinemia reported in premature infants on whom diapers treated with disinfectants containing TCC were used, USDA reviewed the registration status of all formulations containing this compound. Registration was canceled on several products where directions for use involved industrial laundry soaps wherein the treated diapers or clothing could likely be autoclaved in routine hospital practice. Due to this action, all such products were removed from use. This specific action was taken, since detailed studies have proved that TCC was capable of decomposition, and diapers were able to absorb the breakdown products in hospital autoclaves. In addition, USDA required manufacturers to place on the labels of certain laundry products warnings against boiling or autoclaving.

Each of these 4 products could be on the market today under protest registration. Only after accumulation of considerable evidence could USDA move against them and cause their removal. The public, in the meantime, would serve as guinea pig. This bill makes sure that such a possibility will not happen.

The policy of this Nation should always be that a pesticide should not come on the market until adequate proof of safety has been established and it should not be left for the public to play the role of guinea pig while the true facts of toxicity are brought out. Today, it is possible under the law to subject the public to that role when the Government is not satisfied with the manufacturer's proof of safety and yet lacks definite evidence of lack of safety. That grey area must be decided in favor of the public—the consumer.

Protest registration was supposedly a technique to force a court review whenever the manufacturer and the Government disagreed on the safety or effectiveness of the product in question. The proposed legislation rejects this archaic concept of consumer protection and substitutes a system under which both the public's interest and a manufacturer's rights are protected. And this protection runs from the initial decision, through an advisory committee, through a hearing on the record, through judicial review.

In addition, the legislation requires that every pesticide formulation carry its official registration number on the label. In this way the public will be able to tell at a glance that the product on the shelf has satisfied the requirements of Federal law as to its effectiveness and safety when used according to the directions on the label.

This legislation is recommended by the President's Science Advisory Committee. It has been endorsed by the heads of the various affected Federal agencies, the regulated industry and by every witness to appear before our Senate subcommittee now studying the problem of the use of pesticides. I urge its adoption.

Mr. PEARSON. Mr. President, I should like to join the Senator from Connecticut in expressing appreciation to the Senator from Louisiana for reporting the bill. The measure is the direct result of the work of the subcommittee in dealing with pesticides. I believe it carries the endorsement of

[p. 20080]

the appropriate authorities and agencies of the Government. It will be of public service.

Mr. YOUNG of North Dakota. Mr. President, I commend the distinguished Senator from Connecticut, who is a former Secretary of Health, Education, and Welfare, for doing a vast amount of work in this field. The American public is deeply concerned about the use of insecticides and pesticides. The bill is a step in the right direction.

The Department of Agriculture has concerned itself with this problem. In my own State a $2 million Federal research laboratory is now being completed to conduct work in this field alone. More should be done.

Mr. JAVITS. Mr. President, S. 1605 is important not only from the standpoint of eliminating the evils and dangers of pesticides; it is very important that pesticides shall continue to be used. That was the emphasis of the testimony of experts who have appeared before the subcommittee. The danger was that our food supplies would be materially affected if we suddenly wiped out the use of insecticides and pesticides by impossible regulations. Therefore, it is doubly important that the Senate understand that the purpose of the bill is not only to prevent the evils which the Senator has suggested, but also to ensure legitimate and constructive uses of insecticides and pesticides in connection with our food supply.

Mr. RIBICOFF. The Senator from New York is correct.

Mr. PELL. Mr. President, I am happy to add my full support to the bill proposed by the distinguished Senator from Connecticut to plug a dangerous loophole in our pesticide registration laws.

This bill would simply make it more difficult for manufacturers to market products which should not be sold to the public, but which under existing law could conceivably come into the hands of unsuspecting buyers.

As things now stand, a manufacturer can insist on securing a "protest registration" even though the Department of Agriculture has raised doubts as to the safety and effectiveness of his product. I am informed that most manufacturers actually comply with the Department's suggestions, but that a small number—1 in every 2,280 registrations now granted—insist on marketing their products under the protest registrations.

This is of course a very small area of risk, but it is a significant one when chemicals and public health are involved. Clearly, we must take no chances. S. 1605 solves the problem by establishing new and more rigorous procedures for registration, and for this reason, I urge that it be adopted by the Senate today.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1605) was ordered to be engrossed for a third reading, was read the third time, and passed.

[p. 20081]

1.1g (3) (b) Vol. 110 (1964), Feb. 17: Considered and passed House, amended, pp. 2947–2950

REGISTRATION OF PESTICIDE CHEMICALS

The Clerk called the bill (H.R. 9739) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.z(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163 as amended, 7 U.S.C., 1958 ed., Supp III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and tne reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this [p. 2947] section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to the judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set side in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a. (1) and section 9.a. (1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a)(1), 135g.(a)(1)(b) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mrs. SULLIVAN. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER protempore. Is there objection to the request of the gentlewoman from Missouri?

There was no objection.

Mrs. SULLIVAN. Mr. Speaker, I congratulate the chairman and the members of the Committee on Agriculture for acting on the bill now before us to provide greater protection to the public in connection with the use and handling of dangerous economic poissons. I was happy to appear before the Subcommittee on Department Oversight and Consumer Relations of the House Committee on Agriculture on Thursday, August 22, 1963, in support of this legislation, and I am happy today to join in urging House approval of the measure. This bill places the burden of proof on industry, to establish that a pesticide can safely be marketed before a certificate of registration can be issued. At the present time, a manufacturer can insist on the right to market a dangerous product until the Government can present legal proof of the product's hazards and unsuitability for general use.

This is an important step forward in protecting the consumer, but it is only one of a number of problems which we still must face in connection with pesticides. We have tripled the number of inspections by the Food and Drug Administration of shipments of raw agricultural commodities for illegal pesticides residue, but we are still inspecting only 1 percent of such shipments. Greater care must be exercised by the farmer in the use of these terribly dangerous products, and the Government must never relax its vigilance in preventing pesticides residue from contaminating our food. Just the other day we read of instances of a very dangerous pesticide getting into milk supplies. This is intolerable.

Mr. Speaker, under unanimous consent, I submit the testimony I gave on [p. 2948] this legislation on August 22, 1963, as follows:

THE "BURDEN OF PROOF" ON PESTICIDES

(Statement by Representative LEONOR K. SULLIVAN, of Missouri, on legislation to tighten controls over pesticides and economic poisons before Subcommittee on Department Oversight and Consumer Relations of House Committee on Agriculture, Thursday, August 22, 1963)

Chairman JONES and members of the subcommittee, I am strongly in favor of the legislation now before you to require industry, rather than the Federal Government, to shoulder the burden of proof in connection with the marketing of pesticides which may be unsafe for use as intended.

This is an old story—an old controversy—as far as consumers are concerned. It used to be true in the Food, Drugs and Cosmetic Act that a doubtful or dangerous chemical additive could be used in foodstuffs until the Government was able to prove it unsafe. In 1958, we changed that, in the Food Additives Act, by placing on industry the burden of proof to establish in advance the safety of any additive used in food.

In 1960, we put an anticancer clause into the law affecting coloring matter used in foods, drugs or cosmetics. The burden of proof is on the manufacturer. Last year, we passed the far-reaching Drug Control Act so that the consumer would have far greater protections in the use of new drugs. The burden of proof is on the manufacturer.

We still need such a burden of proof shift of emphasis in our laws covering the safety of cosmetics, and of therapeutic devices. I have introduced omnibus legislation carrying out these objectives, and I hope we can pass it in this Congress. As pending before another committee, it would put the burden of proof of safety on the manufacturer.

The same principle of burden of proof is before this subcommittee now in connection with pesticides and economic poisons. The pesticides serve a very important economic purpose. In her tremendously effective book on this subject, Rachel Carson made clear that pesticides often serve a very useful purpose and that it is the improper or unsafe use of these poisons that she opposes. From the response her book elicited from residents of my congressional district, and others in the St. Louis area, I know that there is widespread public concern, which I share, over the pesticides problem.

Under present law, if the Department of Agriculture refuses to register a product for sale because it is not convinced the product is safe or effective, the manufacturer can nevertheless utilize a loophole in the law to place the product on sale anyway, and for an extended period, until the Department can then provide proof of the product's shortcomings. This takes extensive research and, more importantly, it takes time. In the meantime, great damage can be done to the unwary consumer or to public health and safety.

We used to have the same problem in connection with food additives and non-coal-tar color additives; we still, as I said earlier, have it in cosmetics and therapeutic devices. The burden of proof of safety should always be on the manufacturer. These economic poisons are seldom innocuous. They can often kill humans as well as insects. They can contaminate water supplies and meat and vegetable supplies. They must be treated with the respect their danger justifies. We must close any loopholes in the law which permit manufacturers to market products they cannot prove are safe in use in the manner intended. The burden of proof should not rest on the Government, because great damage can be done during the period the Government is developing the data necessary to remove a product which should not be marketed.

I support this legislation and urge its approval.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. ROSENTHAL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.".

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following: "If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committeee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency. Notwithstanding **[p. 2949]** the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

AMENDMENT OFFERED BY MR. ROSENTHAL

Mr. ROSENTHAL. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROSENTHAL: Strike out all after the enacting clause of S 1605 and insert the provisions of H.R. 9739, as passed.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 9739) was laid on the table.

[p. 2950]

1.1g (3) (c) Vol. 110 (1964), April 8: Senate concurred in House amendment with an amendment, pp. 7188–7190

AMENDMENT OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. RIBICOFF. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate bill 1605.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, which was to strike out all after the enacting clause and insert:

That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended; 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objejctions and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to the registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products [p. 7188] acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mr. RIBICOFF. Mr. President, I move that the Senate concur in the amendment of the House, with an amendment which I offer on behalf of myself, the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The ACTING PRESIDENT pro tempore. The amendment submitted by the Senator from Connecticut will be stated.

The LEGISLATIVE CLERK. On page 6, beginning in line 9, it is proposed to strike out the following language:

> All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee.

And in lieu thereof insert the following:

> All data submitted to an Advisory Committee in support of a petition under this section shall be considered confidential by such Advisory Committee: *Provided*, that this provision shall not be construed as prohibiting the use of such data by the Committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that an explanation of our amendment be printed at this point in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR RIBICOFF ON S. 1605

The effect of pesticide chemicals upon plant, animal, and human life has been the subject of widespread public discussion for the last several years.

In the fall of 1962 Rachel Carson's "Silent Spring" heightened public interest and concern. Her book was followed by a critical review of the problem by the President's Science Advisory Committee and its report of a year ago. Since last May, the Subcommittee on Reorganization and International Organizations has been reviewing the subject from the point of view of the adequacy of Federal programs and laws dealing with pesticide research and regulation.

Early in our hearings the problem of "protest registration" was pinpointed. Up to that point it was widely thought that a pesticide could be marketed only after the Department of Agriculture was satisfied as to its safety and effectiveness. As a matter of fact, the law now permits a manufacturer to "register" a doubtful pesticide with the Secretary of Agriculture and proceed to market it. If the Secretary questions the product's safety or effectiveness, he still must register the pesticide "under protest." He then has the burden of establishing that it does not comply with the safety or effectiveness standards prescribed by the act. While the Secretary gathers his proof, a pesticide can be sold on the market and be causing injury.

On May 27, 1963, to close the loophole of "protest registration," this bill would prohibit the marketing of any pesticide until the Government was satisfied as to its safety and effectiveness and empower the Secretary of Agriculture to withdraw a dangerous product from the market without the delay of a long hearing. I was joined in this effort by the Senator from Kansas [Mr. PEARSON], the Senator from Rhode Island, [Mr. PELL] and the Senator from New York [Mr. JAVITS].

On October 25, 1963, the bill passed the Senate. On February 17, 1964, it passed the House with amendments. That is its present status.

Most of the House amendments are technical in nature and should be accepted by the Senate. One, however, causes some difficulty.

In an effort to make certain that the Advisory Committee established under S. 1605 would be covered by confidentiality prohibitions of existing law, the House added language on page 6, lines 14-17 of the bill, as follows:

"All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee."

According to the House Committee on Agriculture in its report on the bill—

"This language was added in order to further protect secret information concerning formulas and packaging methods from disclosure to unauthorized sources by the advisory committee appointed by the Secretary in connection with carrying out the provisions of this bill."

Obviously, the amendment goes beyond "formulas and packaging methods" and applies not only to the Advisory Committee but to the Secretary and all officials of the Department of Agriculture as well, who are already covered by confidentiality restrictions in the law.

I am fearful that the House amendment is not only unnecessarily restrictive but in conflict with other provisions of the bill as well. It should not be accepted by the Senate for three main reasons:

First, it would result in "all data" being considered confidential rather than trade secrets, such as formulas, which are so well deserving of such treatment. In its report on the use of pesticides, the President's Science Advisory Committee expressed the belief that all data used as a basis for granting registration and establishing tolerances should be published, thus allowing the hypotheses and the validity and reliability of the data to be subjected to critical review by the public and the scientific community. The House amendment goes contrary to this proposal.

Second, the scope of this provision, covering "all data" and being applicable to the Secretary of Agriculture as well as the advisory committee, appears to be in direct conflict with the preceding sentence in the bill, starting at line 9 on page 6, which specifically authorizes the disclosure of data when it is necessary.

Finally, it is not necessary to have a further restriction on the Secretary or employees of the Agriculture Department as the act presently prohibits them from revealing information relating to formulas. Furthermore, section 1905 of title 18 of the United States Code is applicable to the officers and employees of the Department and this too makes unlawful the disclosure of confidential information.

[p. 7189]

I will offer an amendment to delete this provision from the bill and substitute in its stead a provision designed to protect actual trade secrets against disclosure by the advisory committee.

I want to emphasize that passage of this bill takes on a new urgency since the recent announcement by the Department of Agriculture that it will hold public hearings on April 9 on the question of removing three highly toxic pesticides from the market.

The Department of Agriculture is obviously considering either removing the pesticides aldrin, dieldrin and endrin from the market altogether or drastically restricting their use. If the evidence supports them this will be accomplished by a change in registration. But as we have already seen, under existing law the manufacturer can still continue to market these products as before until the Department has gathered massive evidence that they are harmful.

The burden of proof should be on the manufacturer to show his product safe rather than on the Government to prove it harmful. This is the essence of adequate consumer protection law. Without it we are back in the dark ages of "let the buyer beware."

What a cruel hoax it would be to crank up the massive machinery of Government—hold a public hearing—reach a conclusion that the three products are at least of doubtful safety—and then watch them continue to appear on the market until a higher degree of proof is gathered by the Government. That higher degree of proof will not be dead fish. We already know about them. It will be injury to people. That is not how the law should work.

If the Department of Agricuture hearings are to have any meaning, S. 1605 must become the law of the land.

I urge approval of the amendment.

Mr. ELLENDER. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I am pleased to yield.

Mr. ELLENDER. Will the Senator from Connecticut state the effect of the amendment?

Mr. RIBICOFF. Yes. This amendment has been cleared with the chairman of the Committee on Agriculture and Forestry [Mr. ELLENDER], the ranking minority member of the committee [Mr. AIKEN], the majority leader, the minority leader, and other Senators. It concerns a bill that will make it possible for the Department of Agriculture, when it acts in regard to the advisability of the use of a pesticide, to end the practice of "protest registration," and make sure that when the Department disapproves an application to register a pesticide, the manufacturer will not be able to put the pesticide on the market as he can today.

The difference between the amendment I offer and the amendment of the House is that the House amendment would keep secret all information submitted in support of the application, while my amendment makes sure data on health and safety is available to the public. We felt that while the formula itself and any trade secret should be kept confidential, it would be against the beneficial interest of the public and against freedom of information to deny to the public and to the various Departments and to the Senate the information, for example, on side effects of the pesticide.

Mr. DIRKSEN. Mr. President, on a number of occasions I have discussed the amendment with the Senator from Connecticut. I think the amendment is acceptable, and I believe that the bill with this amendment will be more acceptable than it would have been without it.

Mr. RIBICOFF. That is true.

In submitting the amendment, I repeat that its cosponsors are the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The Committee on Agriculture and Forestry spend considerable time on this matter; and I am grateful to the chairman of the committee [Mr. ELLENDER] and to its ranking minority member [Mr. AIKEN] for their consideration of both the amendment and the bill.

I think the bill with this amendment will close a very decided gap in connection with one of the potential dangers the country faces from pesticides.

Mr. DIRKSEN. Mr. President, this matter is very much before the public; and there always is a danger that too narrow an interpretation can do a great deal of damage to the entire agricultural economy of the country.

When all is said and done, there is a continuing and unremitting struggle against insect life; and there is only one way to wage that struggle—namely, by the use of pesticides and fungicides that American industry has developed. The industry tries to exercise the utmost of caution and care in establishing careful tolerances in every case.

So I hope particular caution will be exercised, so that we do not get too narrow an interpretation and construction, and thereby do damage to the industrial side of the economy, while doing good on the other side.

Mr. RIBICOFF. I thank the Senator from Illinois for his contribution.

I think it only fair to state that responsible manufacturers have not opposed the provision; and when the Department of Agriculture has raised a question concerning the dangers involved in the use of a particular pesticide, there has invariably been cooperation by most of the manufacturers of the country. However, there is a definite loophole in the law; and from time to time there have been manufacturers who have not acted in so responsible a manner; and even though a particular pesticide has been disapproved, they have continued to sell it on the market.

So I thank the distinguished minority leader for his contributions.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut [Mr. RIBICOFF].

The motion was agreed to.

[p. 7190]

1.1g (3) (d) Vol. 110 (1964), April 29: House concurred in Senate amendment, p. 9421

THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. ROSENTHAL. Mr. Speaker, I ask unanimous consent to take from the Speakers' desk the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, and to concur in the Senate amendment to the House amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment, as follows:

On page 6, lines 9 to 12, of the House engrossed amendment, strike out "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee", and insert "All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee; *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary".

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. CURTIS. Mr. Speaker, reserving the right to object, I assume this has been cleared with this side?

Mr. ROSENTHAL. Yes, it has been cleared with the ranking member of the Committee on Agriculture, and with the minority leader.

Mr. HOEVEN. Reserving the right to object. Mr. Speaker, I want to say that this matter has been cleared with the minority and is perfectly agreeable to us.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The Senate amendment to the House amendment was concurred in.

A motion to reconsider was laid on the table.

COMMITTEE ON THE JUDICIARY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may be permitted to sit today during general debate and during the balance of the week on the prayer bill.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

[p. 9421]

1.1h FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1964

October 3, 1964, P.L. 88-625, §3, 78 Stat. 1002

To further amend the transitional provisions of the Act approved September 6, 1958, entitled "An Act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food Additives Transitional Provisions Amendment of 1964".

SEC. 2. The penultimate sentence of subsection (c) of section 6 of the Food Additives Amendment of 1958 (Public Law 85-929, 72 Stat. 1784, 1788), as added by the "Food Additives Transitional Provisions Amendment of 1961" (Public Law 87-19, 75 Stat. 42), is hereby further amended by inserting before the period at the end thereof a colon and the following: "*Provided*, That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1)(B) of this subsection and clauses (i) and (ii) of this sentence, further extend such effective date, but not beyond December 31, 1965".

SEC. 3. The penultimate sentence of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 288), as added by the "Food

Additives Transitional Provisions Amendment of 1961" (Public Law 87–19, 75 Stat. 42), is hereby further amended by inserting before the period at the end thereof a colon and the following: "*Provided,* That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) of this paragraph (b) and clauses (A) and (B) of this sentence, further extend such expiration date, but not beyond December 31, 1965".

Approved October 3, 1964.

[1002]

1.1h (1) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H. R. REP. No. 1770, 88th Cong., 2d Sess. (1964)

FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1964

AUGUST 12, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROBERTS of Alabama, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 12033]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 12033) to further amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

This bill would permit the Secretary of Health, Education, and Welfare to permit until December 31, 1965, the continued use of certain food additives and pesticide chemicals which were in commercial use before January 1, 1958, but which have not been cleared for use under sections 408 or 409 of the Federal Food, Drug, and Cosmetic Act, if he finds that—

(1) such extension involves no undue risk to the public health;

(2) conditions exist which necessitate the prescribing of such additional period;

(3) bona fide action to determine the applicability of such section 408 or 409 to such uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960;

(4) such bona fide action was pursued with reasonable diligence after March 6, 1960; and

(5) in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith as soon as reasonably practicable the scientific investigations necessary as a basis for action under such sections 408 or 409.

BACKGROUND

The Food Additives Amendment of 1958 (Public Law 85-929, approved Sept. 6, 1958) added a new section 409 to the Federal Food, Drug, and Cosmetic Act, which provided in general for advance clearance by the Food and Drug Administration of all substances proposed to be used as food additives. The act contained transitional provisions permitting the continued use of additives which were in commercial use on Janary 1, 1958, requiring that such additives be tested for safety leading to eventual clearance under section 409. The original transition period was 2½ years in duration, and was due to expire on March 6, 1961.

Experience developed under the operation of the Food Additives Amendment of 1958 revealed that the 2½-year period allowed in the law was insufficient for the completion of testing on a number of additives, and more time was required. The Administration therefore recommended the enactment of legislation (H.R. 3980, 87th Cong.) which would have permitted the Secretary to grant unlimited extensions of time for the testing of additives covered by the 1958 transitional provisions. Testimony of the Commissioner of the Food and Drug Administration indicated that the bulk of the additives covered by the legislation could be tested within 3 years. The proposed legislation was amended so as to limit the duration of extensions to June 30, 1964, and was enacted April 7, 1961 as the Food Additives Transitional Provisions Amendment of 1961 (Public Law 87-19).

As of June 30, 1964, approximately 250 food additives had not as yet been cleared under the food additives amendment, and further research will be required with respect to these additives. These cases involve situations where unexpected difficulties have arisen, and it has been impossible to obtain all the information required by the food additives amendment in the period provided by law, even though the industries affected have proceeded with all due diligence. The reported bill would permit a further extension of time for the testing of these 250 food additives and of a limited number of pesticide chemicals, but the extension may not be granted if there is any undue risk to the public health involved, and the extension may not be granted unless bona fide action by the applicant was commenced before March 6, 1960, and has been pursued with reasonable diligence thereafter.

Draft legislation to permit these extensions was prepared in consultation with the Department of Health, Education, and Welfare and the Department has stated that it has no objection to the legislation.

DETAILED ANALYSIS

The first section of the bill contains a short title which is the "Food Additives Transitional Provisions Amendment of 1964."

Section 2 of the bill amends the next to last sentence of section 6(c) of the Food Additives Amendment of 1958 by permitting extensions heretofore granted with respect to food additives in commercial use before January 1, 1958, to be further extended, but not beyond December 31, 1965, if the Secretary makes appropriate findings prescribed in such section 6(c). In general these findings require that there be no undue risk to the public health, that conditions exist which necessitate the prescribing of such additional period, that bona fide action leading to a determination with respect to the clearance of such additives was commenced before March 6, 1960, and was thereafter pursued with reasonable diligence, and that such extension is consistent with the objective of carrying to completion the necessary scientific investigations.

Section 3 amends the next to last sentence of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 to make an amendment with respect to pesticide chemicals similar in effect to the amendment made by section 2 of the bill with respect to food additives.

Section 3(b) of that act provides that, with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, "if such use was made of such substance before January 1, 1958" the old adulteration provisions of the Food and Drug Act shall continue to apply until March 5, 1960, or until the end of such additional period, not beyond June 30, 1964, as the Secretary of Health, Education, and Welfare may prescribe. This provision was amended by the Food Additives Transitional Provisions Amendment of 1961, so as to include the 1964 date specified above, in order to make possible the bona fide completion of needed scientific studies that could not be completed by March 5, 1961 (the date originally specified in the law).

Under the amendment made by the bill, the Secretary of Health, Education, and Welfare may permit extensions heretofore granted with respect to these pesticide chemicals to be further extended, but not beyond December 31, 1965, if the Secretary makes findings that there will be no undue risk to the public health, that conditions exist which necessitate the prescribing of such additional period, that bona fide action leading to a determination with respect to the clearance of such chemicals was commenced before March 6, 1960, and was thereafter pursued with reasonable diligence, and that such extension is consistent with the objective of carrying to completion the necessary scientific investigations.

AGENCY REPORTS

The favorable reports of the Government agencies on this bill are set forth below:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 6, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of July 27, 1964, requesting the views of the Bureau of the Budget on H.R. 12033, a bill to further amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes.

The Department of Health, Education, and Welfare has reported that it has no objection to this bill in its present form. In view of the considerations set forth in the Department's report, the Bureau of the Budget advises that there would be no objection to the enactment of H.R. 12033 from the standpoint of the administration's program.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 4, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce.
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of July 27, 1964, for a report on H.R. 12033, a bill to further amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes.

This bill incorporates certain modifications suggested in our letter of comment to the sponsor of the bill in connection with a draft bill sent to us for comment. A copy of that letter is enclosed.

For the reasons stated in that letter, we would have no objection to the enactment of this bill in its present form.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 2, 1964.

Hon. JOHN A. BLATNIK,
House of Representatives, Washington, D.C.

DEAR MR. BLATNIK: This is in response to the joint letter, dated May 21, 1964, from you, Senator McCarthy, and Senator Humphrey, requesting that we comment on an enclosed copy of a draft bill to further amend the transitional provisions of the Food Additives Amendment of 1958 and for other purposes. The draft bill would have the short title "Food Additives Transitional Provisions Amendment of 1964."

The draft bill proposes, under safeguards described below, to extend from June 30, 1964, to June 30, 1966, our authority to postpone on an ad hoc basis—with respect to chemicals that were in commercial use before 1958—the effective date of section 3 of the Food Additives Amendment of 1958 (Public Law 85-929), which amended the adulteration provisions of the Food and Drug Act so as to deem a food additive adulterated unless its use has been cleared for safety. The bill would likewise extend from June 30, 1964, to June 30, 1966, our authority to postpone the effective date of the changes made in the adulteration provisions of the Food and Drug Act by the pesticide chemicals amendment (Public Law 83-518), as applied to those chemicals in commercial use before 1958 that were classified as "pesticide chemicals" (instead of "food additives") by the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139). During any such postponement the adulteration provisions of preexisting law under the Food and Drug Act would continue to apply.

As you will recall, the Food Additives Amendment of 1958 (Public Law 85-929) contained transitional provisions authorizing us to postpone until March 5, 1961, the effective date of the provisions above referred to, as applied to additives in commercial use before 1958, if we found that this was necessary and that it would involve no undue risk to the public health. Similarly, when the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139) brought certain agricultural chemicals—about 30 in number—under the Federal Insecticide, Fungicide, and Rodenticide Act and thus indirectly transferred such chemicals from the purview of the food additive provisions of the Food and Drug Act to that of the pesticide chemicals provisions of that act, it contained parallel transitional provisions, meshing with those of the food additives amendment, with respect to those chemicals in commercial use before 1958.

When it became apparent that the March 5, 1961, limitation on the period for which we could thus extend the final effective date involved under these two amendatory laws, as applied to chemicals on the market before 1958, was insufficient to permit resolution of all the complex scientific problems which arose, Congress, by the Food Additives Transitional Provisions Amendment of 1961 (Public Law 87-19), authorized us to grant further postponements, but not beyond June 30, 1964, on an ad hoc basis, in the case of any such chemical in commercial use for which we had previously granted a postponement to March 5, 1961 (or had a request for an extension pending on that date), if, in addition to making the findings required as a basis for the prior postponement, we found (i) that bona fide action to determine the applicability of the clearance requirements of the food additives amendment or pesticide chemicals amendment to such use or to develop the scientific data necessary for action thereunder was commenced before March 6, 1960, and thereafter pursued with reasonable diligence and (ii) that in our judgment such further postponement was consistent with the objective of carrying the necessary scientific investigations to completion in good faith as soon as reasonably practicable. At the time of the enactment of Public Law 87-19 in 1961, over 3,000 uses of chemicals were covered by postponements to March 5, 1961, that we had granted.

The draft bill enclosed with your letter would amend the earlier legislation to authorize us to grant a further postponement, but not beyond June 30, 1966, in any case in which we had previously granted a postponement with respect to a use of a chemical until June 30, 1964. Such a postponement beyond June 30, 1964, could, however, be granted under the terms of the draft bill only if we again made the same findings as are described above under (i) and (ii). The June 30, 1964, cutoff date had been inserted by Congress at the time of the 1961 amendment (Public Law 87-19) because it then was estimated that the bulk of the cases could be finally dealt with in about 3 additional years. It was understood that if that estimate proved overly optimistic legislative authority to grant additional extensions might have to be sought.

While it has been possible for both the industries concerned and this Department to complete the work involved on most of the 3,000 extensions, there are still some 250 uses of food additives and pesticide chemicals on which we are not yet prepared to take final action. The problems on most of these will be resolved within the next 6 to 12 months. However, there are a few cases in which scientific work now in progress could not be completed and evaluated by us within 1 year. In our opinion, the cases pending can be resolved finally within 18 months if pursued with diligence and the expiration date stated in the bill should therefore be December 31, 1965. Secondly, the draft bill needs to be clarified as shown in the enclosed markup, to incorporate by reference the requirement of existing law that any ad hoc postponement granted for the use of a chemical must be based on a finding that the postponement is necessary and involves no undue risk to the public health. (This provision was, we understand, omitted from the draft through inadvertence.)

We would not object to the enactment of the proposed legislation if amended as above suggested. We do not envision circumstances which would require any further extension beyond December 31, 1965.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report.

Sincerely,

WILBUR J. COHEN, *Secretary.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6(c) OF THE FOOD ADDITIVES AMENDMENT OF 1958

SEC. 6. (a) * * *

* * * * * * *

(c) With respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958, section 3 of this Act shall take effect—

(1) either (A) one year after the effective date established in subsection (b) of this section, or (B) at the end of such additional period (but not later than two years from such effective date established in subsection (b) as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) on the date on which an order with respect to such use under section 409 of the Federal Food, Drug, and Cosmetic Act becomes effective,

whichever date first occurs. Whenever the Secretary has, pursuant to clause (1) (B) of this subsection, extended the effective date of section 3 of this Act to March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date, not beyond June 30, 1964, under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1) (B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 409: *Provided, That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) (B) of this subsection*

and clauses (i) and (ii) of this sentence, further extend such effective date, but not beyond December 31, 1965. **The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in** circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

* * * * * * *

SECTION 3 OF THE NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant, or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs. Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may notwithstanding the provision to the contrary in such clause (1), further extend the expiration date not beyond June 30, 1964, applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408: *Provided, That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) of this paragraph (b) and clauses (A) and (B) of this sentence, further extend such expiration date, but not beyond December 31, 1965.* The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

1.1h (2) SENATE COMMITTEE ON LABOR AND PUBLIC WORKS

S. REP. No. 1593, 88th Cong., 2d Sess. (1964)

FOOD ADDITIVES TRANSITIONAL PROVISIONS AMENDMENT OF 1964

SEPTEMBER 23, 1964.—Ordered to be printed

Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 12033]

The Committee on Labor and Public Welfare, to whom was referred the bill (H.R. 12033) to further amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes, having considered the same, report favorably thereon without amendment and recommended that the bill do pass.

SUMMARY

H.R. 12033 would extend the final effective date of the Food Additives Amendment of 1958, as amended, from June 30, 1964, to December 31, 1965, to authorize the Secretary of Health, Education, and Welfare to permit the continued use of certain food additives pending the completion of testing to ascertain their safety; providing he determines that no undue risk to the public health is involved, that conditions necessitate additional time for the testing, and that the testing has been undertaken and is being diligently pursued.

The Food Additives Amendment of 1958 (Public Law 85-929) requires the advance clearance by the Food and Drug Administration of all substances proposed as food additives, but permitted the continued use of additives in commercial use on January 1, 1958, until March 6, 1961, so that the required testing could be carried out. Experience revealed more time was needed for the completion of testing on a number of additives and Congress approved Public Law 87-19 that extended the final effective date until June 30, 1964. Although testing involving some 3,000 food additives has been completed, there are still some 250 food additives on which no

[p. 1]

final determination concerning safety has been made. These cases involve situations where unexpected difficulties have arisen and needed information is still lacking even though the industries affected have proceeded with all due diligence. H.R. 12033 would extend the period for the completion of testing until December 31, 1965.

H.R. 12033 also authorizes the same extension for the transitional provisions of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 [1] that transferred some 30 agricultural chemicals from the food additive provisions of the Food, Drug, and Cosmetic Act to its pesticide chemical provisions.

BACKGROUND

The Food Additives Amendment of 1958 (Public Law 85–929, approved Sept. 6, 1958) added a new section 409 to the Federal Food, Drug, and Cosmetic Act, which provided in general for advance clearance by the Food and Drug Administration of all substances proposed to be used as food additives. The act contained transitional provisions permitting the continued use of additives which were in commercial use on January 1, 1958, requiring that such additives be tested for safety leading to eventual clearance under section 409. The original transition period was 2½ years in duration, and was due to expire on March 6, 1961.

Experience developed under the operation of the Food Additives Amendment of 1958 revealed that the 2½-year period allowed in the law was insufficient for the completion of testing on a number of additives, and more time was required. The Administration therefore recommended the enactment of legislation (H.R. 3980, 87th Cong.) which would have permitted the Secretary to grant unlimited extensions of time for the testing of additives covered by the 1958 transitional provisions. Testimony of the Commissioner of the Food and Drug Administration indicated that the bulk of the additives covered by the legislation could be tested within 3 years. The proposed legislation was amended so as to limit the duration of extensions to June 30, 1964, and was enacted April

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[1] The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes. Nematodes are unsegmented round worms with elongated, fusiform, or sacklike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts. They are also known as nemas or eelworms. The term "plant regulator" means any substance or mixture of substances, intended through physiological action for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

7, 1961, as the Food Additives Transitional Provisions Amendment of 1961 (Public Law 87-19).

As of June 30, 1964, approximately 250 food additives had not as yet been cleared under the food additives amendment, and further research will be required with respect to these additives. The principal area where additional time is needed is in the field of packaging materials that come into contact with food. It has not been finally determined in the case of some packaging materials whether there is migration of substances to the foods. In other cases there has been insufficient time to carry out the intensive scientific testing by the manufacturer and the evaluation of testing that is the responsibility of the Food and Drug Administration. These cases involve situations where unexpected difficulties have arisen, and it has been impossible to obtain all the information re- [p. 2] quired by the food additives amendment in the period provided by law, even though the industries affected have proceeded with all due diligence.

The reported bill would authorize the Secretary of Health, Education, and Welfare to permit until December 31, 1965, the continued use of certain food additives and pesticide chemicals which were in commercial use before January 1, 1958, but which have not been cleared for use under sections 408 or 409 of the Federal Food, Drug, and Cosmetic Act, if he finds that—

(1) such extension involves no undue risk to the public health;

(2) conditions exist which necessitate the prescribing of such additional period;

(3) bona fide action to determine the applicability of such section 408 or 409 to such uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960;

(4) such bona fide action was pursued with reasonable diligence after March 6, 1960; and

(5) in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith as soon as reasonably practicable the scientific investigations necessary as a basis for action under such sections 408 or 409.

DETAILED ANALYSIS

The first section of the bill contains a short title which is the "Food Additives Transitional Provisions Amendment of 1964."

Section 2 of the bill amends the next to last sentence of section 6(c) of the Food Additives Amendment of 1958 by permitting extensions heretofore granted with respect to food additives in commercial use before January 1, 1958, to be further extended, but not beyond December 31, 1965, if the Secretary makes appropriate findings prescribed in such section 6(c). In general these findings require that there be no undue risk to the public health, that conditions exist which necessitate the prescribing of such additional period, that bona fide action leading to a determination with respect to the clearance of such additives was commenced before March 6, 1960, and was thereafter pursued with reasonable diligence, and that such extension is consistent with the objective of carrying to completion the necessary scientific investigations.

Section 3 amends the next to last sentence of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 to make an amendment with respect to pesticide chemicals similar in effect to the amendment made by section 2 of the bill with respect to food additives.

Section 3(b) of that act provides that, with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, "if such use was made of such substance before January 1, 1958," the old adulteration provisions of the Food and Drug Act shall continue to apply until March 5, 1960, or until the end of such additional period, not beyond June 30, 1964, as the Secretary of Health, Education, and Welfare may prescribe. This provision was amended by the Food Additives Transitional Provisions Amendment of 1961, so as to include the 1964 date specified above, in order to make possible [p. 3] the bona fide completion of needed scientific studies that could not be completed by March 5, 1961 (the date originally specified in the law).

Under the amendment made by the bill, the Secretary of Health, Education, and Welfare may permit extensions heretofore granted with respect to these pesticide chemicals to be further extended, but not beyond December 31, 1965, if the Secretary makes findings that there will be no undue risk to the public health, that conditions exist which necessitate the prescribing of such additional period, that bona fide action leading to a determination with respect to the clearance of such chemicals was commenced before March 6, 1960, and was thereafter pursued with reasonable diligence, and that such extenstion is consistent with the objective of carrying to completion the necessary scientific investigations.

DEPARTMENTAL REPORTS

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 16, 1964.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of September 9, 1964, for the views of the Bureau of the Budget on H.R. 12033, a bill to further amend the transitional provisions of the act approved September 6, 1958, entitled "an act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes.

In its August 6, 1964, report to your committee on S. 2977, a bill identical to H.R. 12033, the Bureau stated that in view of the considerations set forth in the report of the Department of Health, Education, and Welfare, it would have no objection to enactment of S. 2977. Accordingly, the Bureau would have no objection to enactment of H.R. 12033.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
September 11, 1964.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This report is in response to your request of September 9, 1964, for a report on H.R. 12033 (as passed by the House), a bill to be known as the Food Additives Transitional Provisions Amendment of 1964.

The bill is identical with S. 2977, on which, in our report of July 17 to you, we advised that, for the reasons stated at length in the enclosure to that letter, we would have no objection to its enactment. (See also, the explanation of the House bill, and our report thereon, set forth in H. Rept. 1770 on that bill.)

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We therefore would have no objection to the enactment of H.R. 12033.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington.

Hon. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: This is in response to the joint letter, dated May 21, 1964, from you, Senator McCarthy, and Congressman Blatnik, requesting that we comment on an enclosed copy of a draft bill to further amend the transitional provisions of the Food Additives Amendment of 1958 and for other purposes. The draft bill would have the short title "Food Additives Transitional Provisions Amendment of 1964."

The draft bill proposes, under safeguards described below, to extend from June 30, 1964, to June 30, 1966, our authority to postpone on an ad hoc basis—with respect to chemicals that were in commercial use before 1958—the effective date of section 3 of the Food Additives Amendment of 1958 (Public Law 85-929), which amended the adulteration provisions of the Food and Drug Act so as to deem a food additive adulterated unless its use has been cleared for safety. The bill would likewise extend from June 30, 1964, to June 30, 1966, our authority to postpone the effective date of the changes made in the adulteration provisions of the Food and Drug Act by the Pesticide Chemicals Amendment (Public Law 83-518), as applied to those chemicals in commercial use before 1958 that were classified as "pesticide chemicals" (instead of "food additives") by the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1958 (Public Law 86-139). During any such postponement the adulteration provisions of preexisting law under the Food and Drug Act would continue to apply.

As you will recall, the Food Additives Amendment of 1958 (Public Law 85-929) contained transitional provisions authorizing us to postpone until March 5, 1961, the effective date of the provisions above referred to, as applied to additives in commercial use before 1958, if we found that this was necessary and that it would involve no undue risk to the public health. Similarly, when the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139) brought certain agricultural chemicals—about 30 in number—under the Federal Insecticide, Fungicide, and Rodenticide Act and thus indirectly transferred such chemicals from the purview of the food additive provisions of the Food and Drug Act to that of the pesticide chemicals provisions of that act, it contained parallel transitional provisions, meshing with those of the food additives amendments, with respect to those chemicals in commercial use before 1958.

When it became apparent that the March 5, 1961, limitation on the period for which we could thus extend the final effective date involved under these two amendatory laws, as applied to chemicals on the market before 1958, was

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insufficient to permit resolution of all the complex scientific problems which arose, Congress, by the Food Additives Transitional Provisions Amendment of 1961 (Public Law 87-19), authorized us to grant further postponements, but not beyond June 30, 1964, on an ad hoc basis, in the case of any such chemical in commercial use for which we had previously granted a postponement to March 6, 1961 (or had a request for an extension pending on that date), if, in addition to making the findings required as a basis for the prior postponement, we found (i) that bona fide action to determine the applicability of the clearance requirements of the food additives amendment or pesticide chemicals amendment to such use or to develop the scientific data necessary for action thereunder was commenced before March 6, 1960, and thereafter pursued with reasonable diligence; and (ii) that in our judgment such further postponement was consistent with the objectives of carrying the necessary scientific investigations to completion in good faith as soon as reasonably practicable. At the time of the enactment of Public Law 87-19 in 1961, over 3,000 uses of chemicals were covered by postponements to March 5, 1961, that we had granted.

The draft bill enclosed with your letter would amend the earlier legislation to authorize us to grant a further postponement, but not beyond June 30, 1966, in any case in which we had previously granted a postponement with respect to a use of a chemical until June 30, 1964. Such a postponement beyond June 30, 1964, could, however, be granted under the terms of the draft bill only if we again made the same findings as are described above under (i) and (ii). The June 30, 1964, cutoff date had been inserted by Congress at the time of the 1961 amendment (Public Law 87-19) because it then was estimated that the bulk of the cases could be finally dealt with in about 3 additional years. It was understood that if that estimate proved overly optimistic, legislative authority to grant additional extensions might have to be sought.

While it has been possible for both the industries concerned and this Department to complete the work involved on most of the 3,000 extensions, there are still some 250 uses of food additives and pesticide chemicals on which we are not yet prepared to take final action. The problems on most of these will be resolved within the next 6 to 12 months. However, there are a few cases in which scientific work now in progress could not be completed and evaluated by us within 1 year. In our opinion, the cases pending can be resolved finally within 18 months if pursued with diligence and the expiration date stated in the bill should therefore be December 31, 1965. Second, the draft bill needs to be clarified as shown in the enclosed markup, to incorporate by reference the requirement of existing law that any ad hoc postponement granted for the use of a chemical must be based on a finding that the postponement is necessary and involves no undue risk to the public health. (This provision was, we understand, omitted from the draft through inadvertence.)

We would not object to the enactment of the proposed legislation if amended as above suggested. We do not envision circumstances which would require any further extension beyond December 31, 1965.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report.

Sincerely,

ANTHONY J. CELEBREZZE, *Secretary.*

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CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6(c) OF THE FOOD ADDITIVES AMENDMENT OF 1958

SEC. 6. (a) * * *

* * * * * * *

(c) With respect to any particular commercial use of a food additive, if such use was made of such additive before January 1, 1958, section 3 of this Act shall take effect—

(1) either (A) one year after the effective date established in subsection (b) of this section, or (B) at the end of such additional period (but not later than two years from such effective date established in subsection (b)) as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) on the date on which an order with respect to such use under section 409 of the Federal Food, Drug, and Cosmetic Act becomes effective,

whichever date first occurs. Whenever the Secretary has, pursuant to clause (1)(B) of this subsection, extended the effective date of section 3 of this Act to March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a food additive, he may, notwithstanding the parenthetical time limitation in that clause, further extend such effective date, not beyond June 30, 1964, under the authority of that clause (but subject to clause (2)) with respect to such use of the additive (or a more limited specified use or uses thereof) if, in addition to making the findings required by clause (1) (B), he finds (i) that bona fide action to determine the applicability of such section 409 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (ii) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under section 409: *Provided, That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) (B) of this subsection and clauses (i) and (ii) of this sentence, further extend such effective date, but not beyond December 31, 1965.* The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

[p. 7]

* * * * * * *

SECTION 3 OF THE NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

SEC. 3. This Act shall take effect on the date of its enactment, except that—

(a) with respect to any nematocide, plant regulator, defoliant or desiccant which was marketed commercially prior to the date of enactment and whose use does not result in residues of same remaining in or on a food, and with respect to any nematocide, plant regulator, defoliant, or desiccant whose use does result in residue remaining in or on a food at the time of introduction into interstate commerce and which use had commercial application prior to January 1, 1958, section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", of the Federal Insecticide, Fungicide, and Rodenticide Act, which this Act amends shall not be applicable until—

(1) March 5, 1960, or such later date, not beyond March 5, 1961, as the Secretary of Agriculture may prescribe on the basis of a determination that such action will not be unduly detrimental to the public interest and is necessary to avoid hardships, or

(2) the date on which a registration for such use is issued under the Federal Insecticide, Fungicide, and Rodenticide Act,

whichever date first occurs; and

(b) with respect to any particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity, if such use was made of such substance before January 1, 1958, section 406(a) and clause (2) of section 402(a) of the Federal Food, Drug, and Cosmetic Act as in force prior to the date of the enactment of the Act of July 22, 1954 (68 Stat. 511) (relating to pesticide chemicals on raw agricultural commodities) shall apply until—

(1) March 5, 1960, or the end of such additional period, not beyond March 5, 1961, as the Secretary of Health, Education, and Welfare may prescribe on the basis of a finding that such extension involves no undue risk to the

public health and that conditions exist which necessitate the prescribing of such an additional period, or

(2) the date on which an order with respect to such use under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) becomes effective,

whichever date first occurs. Whenever the Secretary of Health, Education, and Welfare has, pursuant to clause (1) of this paragraph (b), prescribed an additional period expiring on March 5, 1961, or has on that date a request for such extension pending before him, with respect to any such particular use of a nematocide, plant regulator, defoliant, or desiccant, he may notwithstanding the provision to the contrary in such clause (1), further extend the expiration date not beyond June 30,

[p. 8]

1964, applicable under such clause (1) (but subject to clause (2)) with respect to such use of such substance (or a more limited specified use or uses thereof), if, in addition to making the findings required by clause (1), he finds (A) that bona fide action to determine the applicability of such section 408 to such use or uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960, and was thereafter pursued with reasonable diligence, and (B) that in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith, as soon as reasonably practicable, the scientific investigations necessary as a basis for action under such section 408: *Provided, That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) of this paragraph (b) and clauses (A) and (B) of this sentence, further extend such expiration date, but not beyond December 31, 1965.* The Secretary may at any time terminate an extension so granted if he finds that it should not have been granted, or that by reason of a change in circumstances the basis for such extension no longer exists, or that there has been a failure to comply with a requirement for submission of progress reports or with other conditions attached to such extension.

[p. 9]

1.1h (3) CONGRESSIONAL RECORD, VOL. 110 (1964)

1.1h (3) (a) Sept. 3: Passed House, pp. 21597–21599

FOOD ACTIVITIES TRANSITIONAL PROVISIONS AMENDMENT OF 1964

Mr. HARRIS. Mr. Speaker, I call up the bill (H.R. 12033) to further amend the transitional provisions of the act approved September 6, 1958, entitled "An act to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to prohibit the use in food of additives which have not been adequately tested to establish their safety," and for other purposes, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food Additives Transitional Provisions Amendment of 1964".

SEC. 2. The penultimate sentence of subsection (c) of section 6 of the Food Additives Amendment of 1958 (Public Law 85-929, 72 Stat. 1784, 1788), as added by the "Food Additives Transitional Provisions Amendment of 1961" (Public Law 87-19, 75 Stat. 42), is hereby further amended by inserting before the period at the end thereof a colon and the following: "*Provided,* That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) (B) of this subsection and clauses (i) and (ii) of this sentence, further extend such effective date, but not beyond December 31, 1965".

SEC. 3. The penultimate sentence of section 3 of the Nematocide, Plant Regulator, Defoliant, and Desiccant Amendment of 1959 (Public Law 86-139, 73 Stat. 286, 288), as added by the "Food Additives Transitional Provisions Amendment of 1961" (Public Law 87-19, 75 Stat. 42), is hereby further amended by inserting before the period at the end thereof a colon and the following: "*Provided,* That if the Secretary has, pursuant to this sentence, granted an extension to June 30, 1964, he may, upon making the findings required by clause (1) of this paragraph (b) and clauses (A) and (B) of this sentence, further extend such expiration date, but not beyond December 31, 1965".

Mr. HARRIS. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, this bill is a straight extension of the provisions of existing law, under which the Food and Drug Administration is authorized to permit the continued use of certain food additives in the manufacture of food where there has not been a sufficient time for the completion of all the tests that are required under the provisions of the food additives amendments of 1958. It is my understanding that this legislation was drafted in consultation with the Food and Drug Administration, and that appropriate safeguards are included in the legislation for the protection of the public health. The Department of Health, Education, and Welfare and the Bureau of the Budget have indicated in their reports that they had no objection to the legislation.

In 1958, the Congress adopted the food additives amendments, which provide, in general, for advanced testing on all substances proposed to be used in the manufacture of food, and providing further that no substances could be so used until the Food and Drug Administration had been furnished adequate evidence indicating that the particular additive in question was safe for use. At the time the legislation was enacted, there were a number of additives which were in commercial use. In order to avoid disrupting the entire food processing industry, transitional provisions were included in the legislation under which any substance which was in commercial use as a food additive on or before January 1, 1958, could continue to be used if the Food and Drug Administration determined that the continued use of this additive involved no undue risk to the public health. The majority of the food additives in use in 1958 were cleared for use, or withdrawn from use, within the next few years. The transitional provisions were due to expire in March 1961. and approximately 4,000 substances required further testing at that time. The administration recommended to the Congress legislation which would have provided authority for an unlimited extension of time for the completion of tests on these substances; however, during the hearings in 1961 it was stated to us that within 3 years the bulk of these food additives could be tested for safety. The gentleman from New York [Mr. DELANEY] appeared before our committee and testified in opposition to the open end extension, and recommended that the extension be for a limited period of time, with the understanding that if problems still remained at the end of the period of extension, the legislation could be further extended if necessary. The committee accepted that recommendation and extended the authority of the Food and Drug Administration to June 30, 1964. As of that date, approximately 250 additives still required further work. The purpose of this legislation is to permit an additional 18 months for the completion of necessary testing on these additives. We have been informed that, if reasonable diligence is used, all testing should be completed by December 31, 1965, which is the date on which this legislation expires.

This legislation has been carefully drawn to insure the complete protection of the public health. The Food and Drug Administration may not grant an extension of time for the testing of any food additive unless the following five findings are made:

First. Such extension involves no undue risk to the public health.

[p. 21597]

Second. Conditions exist which necessitate the prescribing of such additional period.

Third. Bona fide action to determine the applicability of such section 408 or 409 to such uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960.

Fourth. Such bona fide action was pursued with reasonable diligence after March 6, 1960.

Fifth. In the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith as soon as reasonably practicable the scientific investigations necessary as a basis for action under such section 408 or 409.

Mr. Speaker, I know of no objection to this legislation; it came out of our committee unanimously and I recommend its approval to the House.

Mr. SPRINGER. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, there is one further point: It is not possible for the Secretary of Health, Education, and Welfare to permit the continued use of additives which the distinguished chairman has so well pointed out, unless he finds that first, such extension involves no undue risk to the public health; second, conditions exist which necessitate the prescribing of such additional period; third, bona fide action to determine the applicability of such section 408 or 409 to such uses, or to develop the scientific data necessary for action under such section, was commenced by an interested person before March 6, 1960; fourth, such bona fide action was pursued with reasonable diligence after March 6, 1960; and, fifth, in the Secretary's judgment such extension is consistent with the objective of carrying to completion in good faith as soon as reasonably practicable the scientific investigations necessary as a basis for action under such section 408 or 409.

With that clarification I believe that the Secretary would be justified in granting such extensions. The hundreds of these pesticides and additives which are in use which were in use in

1958 and have been continued since that time, but are being tested, I believe, by the Food and Drug Administration, certainly should give them more time to do that. It seems to me that the extension of some 18 months is reasonable and in the public interest.

We held extensive hearings on this bill, and we were familiar with this matter in connection with two other cases before the committee that I know of. The bill came out of the committee unanimously, and I believe it should be passed.

Mr. BLATNIK. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, at the outset may I express my appreciation to the distinguished chairman of the committee, the gentleman from Arkansas [Mr. HARRIS], for the general legislation on this subject which involves the health and welfare of American consumers of food.

I appreciate the point raised by the gentleman from Illinois [Mr. SPRINGER], which clearly points out that the public interest and the interest of the Congress are protected very precisely, and by putting on another time limit we also put pressure on these companies to complete the work, which, as has been pointed out, has been pursued with diligence and earnestness. There are some firms which use nontoxic additives and chemicals in their processing. They are compelled or required to prove just what effects they may or may not have. In some 250 instances they were not able to complete their work, and in some of these cases their work is close to completion.

Let me cite the specific case of an outstanding firm in my district, the Chun King Corp., a producer of Chinese foods. They did not use an additive but a chemical involved in the growing of bean sprouts which is essential to their whole operation. If they were to be prevented from using this chemical they would be forced out of business with consequent serious unemployment.

We are appreciative of the special effort made by the chairman and by the members on both sides of the committee to give real consideration to the business and industry people who do need it, and who I am confident will comply with the terms and conditions of the act.

* * * * *

[p. 21598]

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

[p. 21599]

1.1h (3) (b) Sept. 25: Passed Senate, p. 22900

[No Relevant Discussion on Pertinent Section]

1.1i ORGANIZED CRIME CONTROL ACT OF 1969

October 15, 1970, P.L. 91-452, Title II, §204, 84 Stat. 928

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

[p. 928]

1.1i (1) SENATE COMMITTEE ON THE JUDICIARY

S. REP. No. 91-617, 91st Cong., 1st Sess. (1969)

ORGANIZED CRIME CONTROL ACT OF 1969

DECEMBER 18 (legislative day, DECEMBER 16), 1969.—Ordered to be printed

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Mr. McCLELLAN, from the Committee on the Judiciary,
submitted the following

REPORT

together with

INDIVIDUAL AND CONCURRING VIEWS

[To accompany S. 30]

The Committee on the Judiciary, to which was referred the bill (S. 30) relating to the control of organized crime in the United States, having considered it, reports favorably on it, with an amendment in the nature of a substitute, and recommends that the bill as amended pass.

AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Organized Crime Control Act of 1969."

[p. 1]

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168: 7 U.S.C. § 135 (c)), is amended by inserting after "section", the following language: ", or any evidence which is obtained by the exploitation of information,".

[p. 8]

TITLE II: GENERAL IMMUNITY

A grand jury subpoena can compel the attendance of a witness and the production of books and records. Ultimately, however, the grand jury has no power as such to compel the witness to testify or to turn over the books and records. Securing the witness' testimony and having the books and records turned over involve the interaction of the witness' duty to testify and his privilege against self-incrimination.

The modern privilege against self-incrimination applies to any question the answer to which would furnish a link in a chain of evidence, which would incriminate the witness; it need not be answered unless, as the Supreme Court put it in *Malloy* v. *Hogan*, 378 U.S. 1,8 (1964), "he chooses to speak in the unfettered exercise of his own will." Only testimonial utterances fall within its scope. The privilege is personal; it may not be claimed to protect another. In addition, it protects only natural persons; corporations or unions may not claim its protection. The privilege may be waived by the recitation of incriminating facts; the law requires its waiver when an accused testifies in his own behalf at a criminal trial. Generally, it must be asserted to be claimed, or otherwise it is waived. For the privilege is, as Dean Wigmore put it, "merely an option of refusal not a prohibition of inquiry." [28]

Nevertheless, like the duty to testify, the privilege against self-incrimination is not an absolute. Should a witness refuse to testify [p. 51] before a grand jury, asserting his privilege, the inquiry need not be ended. Under proper conditions, it is possible to displace the privilege with a grant of immunity, thus removing the witness' privilege not to answer. It becomes necessary, therefore, to turn to a consideration of the immunity grant and the process whereby it may be enforced.

Congress first adopted a compulsory immunity statute in 1857. Act of January 24, 1857, ch. 19, 11 Stat. 155. Legally, no attack was successfully mounted upon it. The statute protected against prosecution any matter about which any witness testified before Congress. This type of immunity is known as "transaction immunity." It may be illustrated as follows: should an individual receive "transaction immunity" in a grand jury investigation of narcotics in which he discusses the murder of an informant, prosecution of that individual for murder could not subsequently be undertaken, even though an eyewitness volunteered his testimony wholly independent of the grand jury investigation. The operation of the statute was automatic, it was not necessary to claim the privilege, and this led to dissatisfaction with its operation. In its place, therefore, the Immunity Statute of 1862 was enacted. Act of January 24, 1862, ch. 11, 12 Stat. 333. The new statute, which was limited to congressional proceedings, did not grant immunity from prosecution; it merely purported to protect the witness from having his testimony directly used against him. This type of immunity is known as "use immunity," but the "use" restriction was defective because it was limited to the testimony of the witness; no restriction was placed on the derivative "use" of such testimony. True "use immunity" may be distinguished from "transaction immunity" using the above illustration by noting that a subsequent prosecution for murder could be undertaken using the independent eyewitness testimony, but that no direct or indirect use could be made of the individual's testimony. Six years later the statute was broadened to cover judicial proceedings, and the Statutory scheme finally reached the Supreme Court in 1892 in *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). The Court refused to uphold the defective "use" immunity statute, however, noting that the statute to be upheld would have to afford a protection coextensive with the privilege. The Court found the protection inadequate because it did not afford transaction immunity, but merely offered use immunity limited to use of the witness' testimony. The Court observed: "It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him . . ." 142 U.S. at 564.

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[28] Wigmore, *Evidence* § 2268 at 388 (3d ed. 1940).

Congress responded to the *Counselman* decision with the Immunity Act of 1893, Act of Feb. 11, 1893, ch. 83.27 Stat. 443. This time the statute granted immunity from prosecution, not merely from use of the testimony. Once again the constitutional validity of the immunity grant was presented to the Supreme Court. In *Brown* v. *Walker*. 161 U.S. 591 (1896), the Court, by a closely divided vote, sustained its basic constitutionality. The Court held that where transaction immunity is granted and the criminality attaching by law to the actions of the witness is removed by another law, the privilege ceases to operate. The dissenters suggested that the privilege was intended to accord to the witness an absolute right of silence designed to protect not only from criminality but also disgrace or infamy, something no legislative immunity could eliminate. The majority, relying on English history rejected this proposition [p. 52]. Since *Brown* v. *Walker*, the basic principle of the immunity grant has not been successfully challenged, and Congressional enactments extending the principle, for example, to internal security [29] and narcotics [30] investigations have been sustained.

Today, however, Federal statutes grant immunity in only a limited number of classes of cases. Usually the witness must claim his privilege, be directed to testify, and then testify before he receives immunity. Normally, the immunity will extend to all matters substantially related to any matter revealed in a responsive answer. Nevertheless, some Federal statutes grant transaction immunity automatically on testimony without a claim of privilege. The danger here of accidentally granting an individual an "immunity bath" is substantial. Other Federal statutes require specific approval of the Attorney General and a court order before the immunity attaches.

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[29] 18 U.S.C. § 3486, as amended, 18 U.S.C. § 3486(c) (Supp. 1965), *upheld in, Ullman* v. *United States*, 350 U.S. 422 (1956).

[30] 18 U.S.C. § 1406 (1964), *upheld in, Reina* v. *United States*, 364 U.S. 507 (1960).

Under Federal law, the case-by-case limitation on the power to grant immunity has, however, constituted a major impediment to the effective investigation of organized crime. This led the President's Crime Commission to recommend the enactment of a general immunity statute in these terms:

> A general witness immunity statute should be enacted at [the] Federal . . . [level], providing immunity sufficiently broad to assure compulsion of testimony. Immunity should be granted only with the prior approval of the jurisdiction's chief prosecuting officer. Efforts to coordinate Federal, State, and local immunity grants should be made to prevent interference with existing investigations. (Report at 201.)

Up until the recent decisions of the Supreme Court in *Malloy* v. *Hogan*, 378 U.S. 1 (1964) and *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964) the proper scope of a constitutionally valid immunity statute seemed to be transaction immunity not use immunity. Apparently, this approach is not required.

Prior to *Malloy* v. *Hogan*, the privilege was thought to protect only against incrimination under the laws of the questioning sovereign. Under present law, the privilege protects against both State and Federal incrimination. The *Malloy* decision could have spelled the end of valid State immunity statutes. Nevertheless, the Supreme Court indicated in *Murphy* that State immunity statutes were still valid. The Court found that the constitutional privilege was adequately displaced if the witness was protected against direct or derivative use of his compelled testimony. Contrary to the *Counselman* decision, the Court seemed to think that this was possible through the use of the "fruit of the poisonous tree" process of derivative suppression, an analogy borrowed from fourth amendment illegally obtained evidence cases.

If the underlying premise of *Counselman* that there is no way to protect the witness from the derivative use of his compelled testimony has indeed been rejected, it seems that granting immunity from proscution rather than use of testimony is no longer constitutionally compelled on any level, State or Federal. It is not neces-

[p. 53]

sary to give transaction immunity against State prosecution to give a valid grant of Federal immunity.[31]

That this change in constitutional theory has indeed occurred is the square holding of *People* v. *La Bello*, a decision of the New York Court of Appeals on April 24, 1969.[32] In a case where a police officer was indicted for bribery on independent evidence, after testimony before a grand jury, the court held that it was not constitutionally objectionable under the fifth amendment that a State immunity statute:

> . . . only bar[red] the use of the . . . [officer's] testimony or any fruits thereof. Since the police officer's testimony [that was used to obtain the indictment] was in no way derived from anything said by . . . [the officer indicted for bribery] to the Grand Jury and itself established a *prima facie* case of bribery, the indictment was, therefore, based on sufficient and untainted evidence.[33]

The reasoning of the Court with regard to Federal constitutional immunity requirements was as follows:

> Time has shown that this transaction immunity type of statute was unnecessarily broad, that it gives witnesses an immunity not required by the Constitution and that it has the effect of giving an unnecessary gratuity to crime. Where the people have a completely good case against a defendant without his testimony, there is not a single, sound policy reason, nor is there a constitutional compulsion, requiring that a grant of immunity gain a witness complete freedom from criminal liability for his wrongful acts simply because the acts were at some point mentioned to the grand jury. *(People* v. *Laino*. 10 N.Y. 2d 161, 173). If he is protected from the use of his testimony or the fruits thereof, he loses nothing if he is then convicted on independent and untainted evidence.
>
> In our view, the Supreme Court's decision in *Murphy* v. *Waterfront Comm.* (378 U.S. 52) has finally resolved the ambiguity raised in *Counselman* on the necessary scope of an immunity statute. (See also *Gardner* v. *Broderick*, 392 U.S. 273.) Following *Malloy* v. *Hogan* (378 U.S. 1) which made the self-incrimination privilege applicable to the States, the Supreme Court was immediate-

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[31] See generally *Garrity* v. *New Jersey*, 385 U.S. 493 (1967); *Sperack* v. *Klein*, 385 U.S. 511 (1967); *Gardner* v. *Broderick*, 392 U.S. 273 (1968); *Stevens* v. *Marks*, 383 U.S. 234 (1966); and *United States* v. *Blue*, 384 U.S. 251 (1966).

[32] 249 NE 2d 412, 24 NY 2d 598 (1969); *Accord, Byers* v. *People*, 6 Crim. L. Rptr 2022 (Cal. Sup. Ct. (9-16-69).

[33] Id. at 413.

> ly confronted with the problem of how to accommodate the possible conflicts among criminal law enforcement agencies arising from our federal system. The Court in *Murphy* held that, as a consequence of its holding in *Malloy*, the Federal authorities would be barred from any prosecutional use of State "compelled testimony and its fruits" where a witness is granted immunity after asserting his privilege (378 U.S., at p. 79). No transaction immunity was granted as the footnote to Justice Goldberg's opinion at this point makes patent: "Once a defendant demonstrates that he has testified, under a State grant of immunity, to matters related to the Federal [p. 54] prosecution, the Federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence."[34]

Title II of S. 30, as amended, is a general immunity statute that affords "use," not "transaction" immunity. It is derived from S. 2122, originally introduced by Senator McClellan for himself and Senators Ervin and Hruska on May 12, 1969.[35] Title II of S. 30, as initially introduced, was a general immunity statute, applicable only in grand jury and court proceedings. During the course of the hearings on S. 30, the National Commission on the Reform of Federal Criminal Laws recommended to the President the adoption of a general immunity statute that would reflect the developments in the law, noted above, unify all present immunity provisions, and be applicable in grand jury, court, legislative, and administrative proceedings.[36] The President in his message on organized crime of April 23, 1969, commended this proposal to the Congress in these terms:[37]

> [We] need a new broad general witness immunity law to cover all cases involving the violation of a Federal statute. I commend to the Congress for its consideration the recommendations of the National Commission on Reform of Federal Criminal Laws. Under the Commission's proposal, a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense. Furthermore, once the Government has granted the witness such immunity, a refusal

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[34] 249 N.E. 2d at 414.

[35] 115 Cong. Rec. S4913 (daily ed. May 12, 1969).

[36] Hearings at 287–90.

[37] Doc. No. 91–105. U.S. House of Representatives, 91st Cong. 1st Sess. at 5 (1969).

> then to testify would bring a prison sentence for contempt. With this new law, Government should be better able to gather evidence to strike at the leadership of organized crime and not just the rank and file. The Attorney General has also advised me that the Federal Government will make special provisions for protecting witnesses who fear to testify due to intimidation.

S. 2122 was introduced to implement these recommendations. H.R. 11157, introduced by Congressmen Poff, Edwards, and Kastenmeier on May 12, 1969, is the companion bill in the House.[38] Each of the congressional sponsors of this legislation is a member of the National Commission on the Reform of Federal Criminal Laws. Congressman Poff, its principal draftsman, is the vice chairman.

At the suggestion of the Department of Justice,[39] the provisions of S. 2122 were substituted for the language of title II of S. 30, as originally drafted. As now drafted, title II has the support of the Department of Justice. Its provisions also received the support of the majority of witnesses who testified or submitted statements for the consideration of the subcommittee, including various administrative agencies,[40] whose present practice would be affected by its enactment, although opposition was expressed to the proposed [p. 55] bill by the American Civil Liberties Union,[41] which feels that it is both unwise and unconstitutional; the union's position is essentially that of the dissenting Justices in *Brown* vs. *Walker*,[42] which was rejected by the Supreme Court in 1896.

Title II thus represents the best thinking of the committee in the area of the grant of immunity from the privilege against self-incrimination. Its provisions are summarized above[43] and analyzed in detail in the section-by-section analysis below.[44] As now drafted, the committee recommends that title II pass.

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[38] 115 Cong. Rec. H3539 (daily ed. May 12, 1969).

[39] Hearings at 370.

[40] Only the Federal Deposit Insurance Corporation objected to the proposed statute. Hearings at 515. Its position, however, is "not in accordance with the program of the President." *Ibid.*

[41] Id, at 459–62.

[42] *Brown v. Walker*, 161 U.S. 591 (1896).

[43] Supra at 32.

[44] Infra at 144.

DEPARTMENT OF JUSTICE COMMENTS ON S. 30

* * * * * * *

[p. 101]

TITLE II—IMMUNITY

Title II of S. 30, entitled "Immunity", would amend Chapter 1 of Title 18, United States Code, to add new Section 16, "Compelling of testimony and other evidence with respect to Federal offenses."

This provision would authorize the United States Attorney, with the approval of the Attorney General or an Assistant Attorney General designated by him, to apply for a court order to compel testimony in a Federal grand jury or court proceeding involving a violation of any Federal law, and in return immunity for the witness would result. While specific immunity provisions are presently scattered throughout the United States Code, this provision would for the first time provide for compelling testimony in proceedings involving any violation of Federal law.

This provision, moreover, unlike most previous immunity provisions does not grant total immunity from prosecution with respect to matters testified to, but merely provides that the evidence given shall not directly or indirectly be used in any future prosecution.

In *Counselman* v. *Hitchcock,* 142 U.S. 547 (1892), the Supreme Court held that an immunity statute which merely provided that the evidence compelled could not be used against the witness in any criminal proceeding was insufficiently broad to comply with the guarantee of the fifth amendment. The court reasoned that the testimony which was compelled might nevertheless be used "to search out other testimony" to be used against him in a criminal proceeding, 142 U.S. at 564. The court concluded that "no statute which leaves the party or witness subject to prosecution after he answers the incriminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States," 142 U.S. at 585.

Since *Counselman,* Federal immunity statutes have been phrased in terms which would bar any prosecution for or on account of any matter as to which testimony was compelled, see *e.g.* 49 U.S.C. §46. However, in two recent decisions, *Murphy* v. *Waterfront Commission,* 378 U.S. 52, 79–80 (1964), and *Marchetti* v. *United States,* 390 U.S. 39, 58–60 (1968), the Supreme Court has indicated that complete immunity from future prosecution is not essential and that a witness' privilege against self-incrimination would not be violated if he were compelled to testify under an assurance that the evidence he gave could not be used against him either directly or indirectly, i.e., as an investigative lead, in a State or Federal prosecution.

In view of the Court's expression in *Murphy* and *Marchetti*, it would seem that the use restriction concept contained in title II furnishes all the immunity the Constitution requires.

In his special message to the Congress of April 23, 1969, dealing with organized crime, President Nixon stated the need for a new broad general witness immunity law to cover all cases involving violation of a Federal statute, and he commended to the Congress for its consideration the recommendations of the National Commission on Reform of Federal Criminal Laws. The National Commission's proposed general immunity statute, unlike the present proposal which is limited to "any case or proceeding before any grand jury or court of the United States," would create a single, integrated

[p. 107]

immunity provision applicable to grand jury-court proceedings; formal administrative hearings by an independent agency or within the executive branch; and congressional investigations. Like the present proposal, however, the protection offered the witness is a restriction against use of incriminating disclosures or their fruits in any criminal case rather than absolute immunity from prosecution.

Under this proposal, in all three types of proceedings the Attorney General would receive notice of intent to obtain an immunity authorization. For grand jury-court proceedings the approval of the Attorney General is required upon a certification of need by the U.S. attorney. For administrative hearing matters, the public interest assessment and power to issue a direction to testify are left with such agency officials as may be specified by statute, and notice must be given to the Attorney General at least 10 days prior to the direction to testify. For congressional investigations the direction to testify is made by the U.S. district court upon application by a duly authorized representative of either House of Congress, and notice of the application must be served on the Attorney General at least 10 days prior to the time the application is made. Upon request of the Attorney General the court must defer the direction to testify for no longer than thirty days from the date of such notice to the Attorney General.

One of the obvious merits of this proposal is its provision for notice to a central law enforcement point, the Attorney General, as a means of attempting to insure that the "public interest" being promoted by one agency will not subvert the "public interest" being promoted by another agency.

Accordingly, the Department of Justice recommends enactment of the immunity proposal of the National Commission on Reform of Federal Criminal Laws in lieu of the proposal contained in title II of this bill.

[p. 108]

TITLE II

Section 201.—This section amends title 18, United States Code, by adding a new part V, entitled "Immunity of Witnesses."

Section 6001 contains definitions.

Subsection (1) defines "agency of the United States" to mean any executive department or military department and certain independent agencies. The agencies enumerated are those having immunity granting power under present law. Delegation of the immunity power within the agency is intended to follow present practice within the agency for the delegation of comparable powers.

[p. 144]

Subsection (2) defines "other information" to include books, papers, and other materials. The phrase is used in contradistinction to oral testimony. It would include, for example, electronically stored information on computer tapes. Its scope is intended to be comprehensive, including all information given as testimony, but not orally. The phrase is also used in other sections of the proposed Act. See title IV, proposed 1623(a). The meaning is intended to be the same throughout.

Subsection (3) defines "proceeding before an agency of the United States" to include proceedings characterized by compulsory process designed to elicit testimony or other information.

Subsection (4) defines "court of the United States" in all embracing terms.

Section 6002 contains the basic immunity from self-incrimination granting authorization. Proceedings before or ancillary to grand juries, courts, agencies of the United States, or before either House of Congress, joint committees, committees or subcommittees thereof are covered. A pretrial deposition hearing, for example, would be "ancillary to" a court proceeding. (See Hearings at 409, 411.) The witness must claim his privilege to receive immunity. The proposed provision is not an "immunity bath." See *United States* v. *Monia*, 317 U.S. 424 (1943). Refusal to testify following communication of the immunity order warrants contempt proceedings. No oral testimony or other information secured from a witness can be used against him in a criminal proceeding. This statutory immunity is intended to be as broad as, but no broader than, the privilege against self-incrimination. (See Hearings at 326.) It is designed to reflect the use-restriction immunity concept of *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964) rather the transaction immunity concept of *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). The witness is also protected against the use of evidence derivatively obtained. The statutory language is phrased in the terms of present law. See *Wong Sun* v. *United States*, 371 U.S. 471, 488 (1963). The exception for perjury, false statements or other failure to comply with the order is probably unnecessary. See *United States* v. *Monia*, 317 U.S. 424 (1943). It is included out of caution to insure that such immunity is not given. See *United States* v. *Orta*, 253 F. 2d 312 (5th Cir.), *cert. denied*, 357 U.S. 905 (1958).

Section 6003 sets out the procedure to be followed in court and grand jury proceedings. Immunity orders may be obtained prospectively. This sets aside the result that obtained in *In Re McElrath*, 248 F. 2d 612 (D.C. Cir. 1957). The court's role in granting the order is merely to find the facts on which the order is predicated. The statutory language is "shall." Review that second judges prosecutive discretion is not authorized. Compare *In Re Bari*, 304 F. 2d 631 (D.C. Cir. 1962). With the approval of the Attorney General, Deputy Attorney General or an Assistant Attorney General who is designated by the Attorney General, the United States Attorney may seek a court order. He must be satisfied that the testimony is needed in the "public interest" and the witness must have refused or be likely to refuse to testify, claiming self-incrimination.

Section 6004 sets out the procedure to be followed in administrative hearings. A 10-day waiting period must be followed from the date the Attorney General is served with a notice of intention to grant immunity until the grant is made unless the Attorney General notifies the agency otherwise sooner. The Attorney General, therefore, has 10 days to object informally to the grant of immun-

[p. 145]

ity, although approval should be granted in less time in most situations. The Attorney General is not given a veto power. The agencies' discretion to confer immunity is subject to the same test applicable to the Attorney General, noted above. It is expected that the Attorney General and the responsible agency, however, will be able to work out any differences they might have with regard to the immunity grant. Court intervention is not required.

It is anticipated that, upon enactment of the bill, the Attorney General will take such steps as are necessary to insure that appropriate procedures are followed by each agency to designate who may issue immunity orders and in what circumstances they may be issued. It is assumed that the Attorney General will take such other steps as are necessary to insure that his office is familiar with the immunity-granting procedures of each agency, in order that issuance of such orders might be expedited and no orders will be issued without authorization by any agency.

Section 6005 sets out the procedure to be followed in congressional proceedings. A court order must be obtained based on an affirmative vote of a majority of members present in a proceeding before either House or a two-thirds vote of the members of the full committee in a proceeding before a committee. Ten days' notice must be given to the Attorney General prior to seeking the order. The court must defer issuance up to 20 days at the Attorney General's request. As in administrative proceedings, however, the Attorney General is not given veto power. Nor is the court given any power to withhold the order if the factual prerequisites are met.

* * * * * * *

Section 204.—This section makes a conforming amendment to the act of June 25, 1947. It makes the language of the act reflect the use-restriction immunity concept, noted above. See proposed § 6005, above.

[p. 146]

Federal Insecticide, Fungicide, and Rodenticide Act §5, 61 Stat. 168

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, *or any evidence which is obtained by the exploitation of information,* shall not be used in a criminal prosecution of the person from whom obtained.

[p. 175]

1.1i (2) HOUSE COMMITTEE ON THE JUDICIARY

H.R. REP. No. 91-1549, 91st Cong., 2d Sess. (1970)

ORGANIZED CRIME CONTROL ACT OF 1970

SEPTEMBER 30, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROGERS of Colorado, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL, INDIVIDUAL, AND DISSENTING VIEWS

[To accompany S. 30]

The Committee on the Judiciary, to whom was referred the bill (S. 30) relating to the control of organized crime in the United States, having considered the same, report favorably thereon with an amendment and recommended that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Organized Crime Control Act of 1970."

* * * * * * *

[p. 1]

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence.".

[p. 6]

TITLE II—GENERAL IMMUNITY

Title II is a general Federal immunity statute that will afford "use" immunity rather than "transaction" immunity when a witness before a court, grand jury, Federal agency, either House of Congress, or a congressional committee or subcommittee, asserts his privilege against self-incrimination. It is contemplated that the title will enable effective displacement of the privilege against self-incrimination by granting protection coextensive with the privilege; that is, protection against the use of compelled testi-

[p. 32]

mony directly or indirectly against the witness, in a criminal proceeding.

Title II has been revised so as to add the District of Columbia

Court of Appeals and the Superior Court of the District of Columbia to the definition of "court of the United States"; to require the approval of the Attorney General for the issuance of immunity orders by U.S. agencies; to effectuate a number of additional repeals and amendments made necessary by the recent enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91–358), and to make a number of technical amendments.

A more detailed report on the immunity problem is contained in this committee's report to accompany H.R. 11157 (H. Rept. 91–1188, dated June 15, 1970).

[p. 33]

Section 204.—This section makes a conforming amendment to the act of June 25, 1947. It makes the language of the act reflect the use-restriction immunity concept, noted above. See proposed § 6005, above.

[p. 43]

Title II

Title II proposes to supplant the absolute immunity granted to those forced to sacrifice their fifth amendment right to remain silent, for transaction, or use, immunity. This departure is premised on the views of some attorneys and legal scholars that *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892) (which set the requirement at absolute immunity) has been overruled by *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964).

Without arguing the merits of the dispute concerning the relationship of *Counselman* and *Murphy*, we seriously question the wisdom of legislative change in this field. The courts have fashioned the rules concerning immunity, and we feel the changes being molded should continue to reside within their purview.

Moreover, we question whether due regard has been given the constitutional protection of the fifth amendment in the fashioning of this title.

[p. 194]

1.1i (3) CONGRESSIONAL RECORD VOL. 116 (1970)

1.1i (3) (a) Jan. 21, 22, 23: Debated in Senate, pp. 587–588, 601, 852–853, 952

Mr. McCLELLAN.

* * * * *

TITLE II—GENERAL IMMUNITY

Mr. President, title II of S. 30 is a comprehensive immunity provision designed to replace more than 50 immunity statutes now in operation. When S. 30 was originally introduced its scope was limited to grand jury and court proceedings. It was designed to implement the recommendation of the President's Crime Commission that such a provision not only was necessary in the general administration of justice, but also was essential in the fight against organized crime. During the course of the hearings, however, the National Commission on the Reform of Federal Criminal Laws issued a report recommending that comprehensive reform and codification action be undertaken in this field. Accordingly, title II was reexamined in this context, and the decision was reached to go forward and properly to treat the overall problem in the administration of justice. Title II now provides for judicial, administrative, and congressional immunity grants, subject to carefully framed safeguards for individual liberties, where information which may be necessary for the public interest is likely to be refused to be provided on the basis of the privilege against self-incrimination.

Mr. President, the relation between the privilege against self-incrimination and immunity grants has been examined by our courts over a considerable period of time. In *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892), the Supreme Court invalidated an immunity statute which only prevented evidence from being used in subsequent court proceedings, where the evidence had been compelled under an immunity grant. The court stated:

> It could not, and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. (142 U.S. at 564.)

In response Congress passed a "transaction immunity" statute, which provided that the person compelled to testify could not be prosecuted, under any circumstances, for the criminal activities concerning which he had testified, in *Brown* v. *Walker*, 161 U.S. 591 (1896), this statute was upheld, despite the argument that was made that the principle of *Counselman* should be extended to prevent self-degradation as well as self-incrimination. The court answered this contention:

> The authorities are numerous and very nearly uniform to the effect that, if the proposed testimony is material to the issue on trial, the fact that the testimony may tend to degrade the witness in public estimation does not exempt him from the duty of disclosure. A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation and ought not to call upon the courts to protect that which he has himself esteemed to be of such little value. (161 U.S. at 605.)

The court also stated:

> Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege. (161 U.S. at 600.)

Immunity legislation remained at this point until 1964. In that year, the Supreme Court handed down *Malloy* v. *Hogan*, 378 U.S. 1 (1964), and *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964). In order to make State immunity statutes valid, the court held that they must also protect against Federal prosecution. Drawing upon recently developed criminal procedure rulings on the derivative suppression of evidence, the court stated:

[p. 587]

> We hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. (378 U.S. at 79.)

In a footnote, Mr. Justice Goldberg went on to state:

> The federal authorities have the burden of showing that their evidence is not tainted by establishing an independent, legitimate source for the disputed evidence. (*Id* at n. 18)

This is the use-restriction immunity that is embodied in title II. Under it, once a witness has testified, he can only be prosecuted for the acts concerning which he has been immunized if the prosecution can "establish an independent, legitimate source for the disputed evidence."

The President of the United States on April 23, 1969, in his Message on Organized Crime, commended the basic concept of title II to the Congress, stating:

> I commend to the Congress for its consideration . . . [the proposal under which] . . . a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense. (Doc. No. 91-105, House of Representatives, 91st Cong., 1st Sess. at 5 (1969).)

Mr. President, in a concurring opinion in Murphy, Mr. Justice White stated:

> Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination. (378 U.S. at 107.)

This was but another way of saying that we ought not tolerate anything which gives, in the words of Mr. Justice Holmes in *Heike* v. *United States*, 227 U.S. 131, 144 (1913), a "gratuity to crime."

Mr. President, since Murphy, the trend in the laws of the States appears to be moving in escalating speed in the direction of "use-restriction" immunity. New York and California embraced use-restriction immunity in 1969. Today's New York Times contains a report of a unanimous decision of the New Jersey Supreme Court, which holds that the fifth amendment only requires protection from prosecution with regard to statements made under immunity and from "fruits" of compelled testimony. This is the theory embraced in title II of S. 30.

Mr. President, I ask unanimous consent that the text of The New York Times article appear at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 21, 1970]

JERSEY'S CRIME UNIT IS UPHELD ON RIGHT TO FORCE WITNESSES TO TESTIFY

TRENTON, JANUARY 20.—The power of the State Commission of Investigation to seek the indefinite imprisonment of witnesses who refuse to testify after being granted immunity from prosecution was unanimously upheld today by the New Jersey Supreme Court.

The decision by the state's highest court clears the way for an all-out investigation of organized crime and corruption and it places three reputed Mafia figures closer to prison terms on civil contempt charges sought by the state last summer.

The commission had been forced to hold off several new inquiries and the original one it undertook last year into charges of mob infiltration and political corruption in the Monmouth County shore community of Long Branch pending the outcome of its legal challenges to its most important power—its right to jail witnesses who refuse to talk after being assured that they would not be prosecuted for any disclosures they made.

The three reputed Mafia witnesses are Joseph (Joe Bayonne) Zicarelli, believed to be rackets boss in Hudson County; Anthony (Little Pussy) Russo, allegedly Mafia leader in Monmouth and Robert (Bobby Bastle) Occhipinti, said to be a lieutenant in the Mafia family headed by Simone Rizzo (Sam the Plumber) DeCavalcante.

TROUBLE IS COMPOUNDED

The court decision only compounds Zicarelli's problems with the law since he was indicted by the statewide grand jury for conspiracy to murder late last year. As for Russo, he is free on bail pending an appeal of a six-year prison sentence on a perjury conviction for lying to a Monmouth County grand jury.

William F. Hyland, the investigation commission chairman, announced later that the full four-man commission would convene here tomorrow. Other sources reported that the commission would then ask Superior Court Judge

Frank J. Kingfield to enforce the contempt citation ordered last summer and jail the three witnesses.

Although the lawyers for the three men could not be reached for comment tonight, commission sources said they expected the three men to appeal the Supreme Court decision in the Federal courts now that they had exhausted every legal remedy in the state.

The court's decision, which was delivered by Chief Justice Joseph Weintraub, rejected every argument made in behalf of the three men, including one in which their lawyers contended that the commission presented their clients with an impossible dilemma.

If their clients talked, the lawyers argued, they faced certain execution at the hands of the mob. If they did not talk, they faced prison terms that could conceivably run for the rest of their lives. The lawyers contended that such a choice deprived their clients of due process safeguards embodied in the Fourth Amendment to the Constitution.

At a hearing last December, the courts rejected this argument as "fantastic beyond belief," an affront to the court.

ARGUMENT IS REJECTED

As for the legal argument that witness immunity violated Fifth Amendment protection against self-incrimination, the court declared that it did not and cited other similar rulings.

"We are satisfied," the court said, "that the Fifth Amendment does not require immunity from prosecution. An immunity of that breadth exceeds the protections of Fifth Amendment accords. More importantly, to find that demand in the Fifth Amendment would in practical terms deny state government access to facts it must have to meet its duty to secure the well-being of all citizens. We heretofore deemed the Constitution to require immunity against use of testimony rather than immunity from prosecution."

In essence, the court said the Fifth Amendment protected the three witnesses from prosecution resulting from anything they might say, and not from prosecution entirely. The court also repeated the Federal Court rule that states that the "fruits" of any "compelled testimony" may not be used in connection with any Federal prosecution.

Moreover the court said, "The role of the S.C.I. is not accusatory and the rights accorded to the individuals concerned are appropriate and adequate in light of the agency's mission and powers."

Unlike grand juries that seek indictments and prosecutors who seek convictions, the Investigation Commission seeks to publicize crime and corruption and report its findings to the public, the Governor and the Legislature.

Mr. McCLELLAN. Mr. President, in light of present derivative-suppression techniques, and Supreme Court decisions, to refuse to enact use-immunity legislation is to give a "gratuity to crime." In a society which is besieged by organized crime, the U.S. Senate is in no position to hand out such gratuities. Title II would revoke the gratuity that the member of organized crime and others now enjoy under present immunity legislation and substitute for it carefully drafted legislation that both reforms and codifies the law in this field.

[p. 588]

Mr. HRUSKA.

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The other procedural reforms contained in titles II through VII, dealing, respectively, with general immunity, recalcitrant witnesses, false declarations, protected housing facilities for housing Government witnesses, depositions, litigations, and title X, dealing with dangerous special offender sentencing, are all necessary complements of the reinforced grand jury powers. These provisions will insure the necessary quantity and quality of evidence sufficient for valid indictments and convictions of organized crime figures. They provide the imposition of appropriate sentences for such convicted professional or organized crime offenders. These long overdue remedies are indispensable legal tools for providing our law enforcement officials with the evidence necessary to bring consistently effective criminal sanctions to bear on the leaders and participants of organized crime.

[p. 601]

Mr. YOUNG of Ohio.

* * * * *

An example of the flagrant flouting of constitutional guarantees is contained in title II which establishes a general immunity statute applicable to any Federal court, grand jury, or administrative proceeding, as well as congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the fifth amendment protection against self-incrimination which are both undesirable and unconstitutional. Being a blanket provision, title II obviously is not limited to organized crime. Furthermore, the bill restricts immunity to protection of an individual against use of compelled testimony or documents but not against prosecution for matters as to which a person was compelled to testify or produce documents.

In 1892, the Supreme Court held a similar immunity statute unconstitutional because it protected against use of evidence but not against prosecution. Since that time Federal immunity statutes have typically provided immunity against prosecution as well as use. This provision of the bill is a serious erosion of the rights guaranteed all Americans in the fifth amendment to the Constitution of the United States.

* * * * *

Mr. President, the Washington office of the American Civil Liberties Union recently prepared a detailed analysis of the manner in which the provisions of the proposed bill run counter to the law and spirit of the Constitution and contain manifold possibilities for abuse. I ask unanimous consent that this analysis be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

[p. 852]

* * * * *

TITLE II—GENERAL IMMUNITY

Title II establishes a general immunity statute applicable to any federal court, grand jury or administrative proceeding, as well as Congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the Fifth Amendment protection against self-incrimination which are both undesirable and unconstitutional.

Being a blanket provision, Title II obviously is not limited to organized crime. But there are defects more striking than its unselective breadth, particularly the restriction of immunity to protection against *use* of compelled testimony or documents (or the "fruits" thereof) against a person in a criminal case, rather than protection against *prosecution* for matters as to which a person was compelled to testify or produce documents.

In 1892 the Supreme Court held a similar immunity statute unconstitutional because it protected only against *use* of evidence but not against *prosecution*. *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). Since then federal immunity statutes have typically provided immunity as to prosecution, not only use. *Counselman* is still the law. *See Stevens* v. *Marks*, 383 U.S. 236, 244-45 (1966). Only a few years ago the Judiciary Committee reported an anti-racketeering bill (S. 2190) with immunity against prosecution rather than just use because of doubts that otherwise the law would be unconstitutional. *See S. Rept. No. 1498*, 89th Cong., 2d Sess. 19-20 (1966). Nothing has happened since then to lessen those doubts.

Title II may be of doubtful constitutionality on another ground. It only gives protection against the use of compelled testimony against the witness "in any criminal case." Although the Fifth Amendment is also framed in terms of "any criminal case" it has long been the law that the Fifth Amendment offers protection as to a variety of penalty or forfeiture proceedings. *Boyd* v. *United States*, 116 U.S. 616 (1886); *cf. One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693 (1965). If Title II is intended to apply to anything less than what is covered by the Fifth Amendment it is unconstitutional, for the scope of the immunity must at least equal the scope of protection of the Fifth Amendment. *E.g.*, *Brown* v. *Walker*, 161 U.S. 591 (1896).

Title II has other defects. Although a court order must be obtained in order to require a witness to testify in court proceedings, the requirement is a sham since the court "shall" issue the order if requested by the district attorney, and therefore it has no discretion. If he has the approval of the Attorney General, the Deputy Attorney General or an Assistant Attorney General, a district attorney may request such an order anytime *he* thinks a person has refused *or is likely to refuse* to testify on self-incrimination grounds and if *he* thinks the testimony *may be necessary* to the public interest. Such elastic standards leave enormous uncontrollable leeway and possibility for abuse.

In addition, the power of the district attorney to compel a witness to testify is not even limited to cases in which the government is a party. It is apparently available in any case in a federal court, including civil actions between private parties. The need for or propriety of such power in any civil proceeding, and particularly in a non-governmental proceeding, is highly questionable. This unjustifiable breadth —coupled with the lack of any effective court review or control, and the power granted under Title III to incarcerate a witness who refuses to testify—compounds the potential for abuse.

Finally, in requiring that a witness must refuse to testify and specifically claim his Fifth Amendment privilege, Title II creates unnecessary pitfalls for the unwary or unsophisticated, particularly where the district attorney, agency or committee has already obtained or issued an order compelling testimony. A naive or ill-advised witness may well feel that there is no point in claiming his privilege because he can be ordered to testify, and for even the fullest, most incriminating testimony he would receive no immunity whatsoever.

[p. 853]

Mr. THURMOND.

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Mr. President, I shall briefly review the bill. Under title I, special grand juries to concentrate on criminal activities are provided for in major metropolitan areas. These grand juries will be empowered to stay in session up to 36 months, can subpena witnesses, compel testimony and issue public reports as well as bring indictments. Under title II, provisions are contained in the bill for expanding the granting of immunity from self incrimination in legislative and court proceedings in order to make better use of witnesses in criminal proceedings. Under these provisions, immunity from the use of testimony itself, rather than from prosecution itself is afforded. This will facilitate compelling witnesses to testify, as this immunity will prevent the use of the fifth amendment. Title III provides for contempt proceedings without bail for recalcitrant witnesses in grand jury and court proceedings. Title III also makes witnesses who avoid State proceedings subject to Federal prosecution. This, in conjunction with the previous title concerning immunity, will help prosecutors in obtaining convictions where they have been in the past hampered because they were unable to secure testimony. Title IV makes it easier to convict witnesses of perjury. Title V provides that the U.S. Attorney General can maintain witnesses and their families under Federal protection when they testify in matters involving organized crime. Title VI provides for the taking of depositions of witnesses in criminal cases in order to preserve their testimony in the event they are unable to testify. Title V and title VI should be most beneficial in aiding Federal prosecutors in securing the testimony of witnesses against people involved in organized crime. The present difficulties in gathering evidence have been a substantial impediment to the effective prosecution of criminals involved in organized crime.

[p. 952]

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1.1i (3) (b) Jan. 23: Amended and passed Senate, p. 971, 972

Mr. MANSFIELD. Mr. President, sometimes I wish I were a lawyer. At other times I am very glad that I never entered that profession.

We have now spent 3 days on this bill, with the lawyers, by and large, arguing over the fine points of the proposed legislation which has been a year in the making.

Undoubtedly there are bugs in this bill, as there are in almost any bill which the Senate passes. But I think the issue is so important that, insofar as the bugs are concerned, we might well consider resolving our doubts in favor of the legislation, so that we can attack a menace which is becoming more and more difficult to cope with in this city and in this Nation.

Therefore, I hope that the Senate will go on record today with a solid vote of support for this legislation, so that we can indicate that we are ready to cope with the growing criminality which is becoming so prevalent and so hard to control throughout the Nation, and do it with a big bang today.

Mr. PASTORE. Amen.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

[p. 971]

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The result was announced—yeas 73, nays 1, as follows:

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So the bill (S.30) was passed.

[p. 972]

1.1i (3) (c Oct. 6, 7: Debated, amended, and passed House, pp. 35191, 35196–35197, 35200, 35207–35208, 35012–35013, 35291, 35303–35304, 35313, 35321, 35335–35337, 35363–35364

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1235 and ask for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution.

The SPEAKER pro tempore. The question is, Will the House now consider House Resolution 1235.

The question was taken; and (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 1235.

* * * * *

Title II of the bill is a general immunity statute that will afford "use" immunity rather than "transaction" immunity, in line with the provisions of H.R. 11157 which was reported by the Judiciary Committee on June 15th of this year and is pending on the House calendar.

* * * * *

Mr. Speaker, I simply add the purpose of this bill is to amend a number of existing criminal statutes, with particular attention to the problems raised by organized crime, in order to enable local, State, and Federal law enforcement officers and our court systems to deal more effectively with the problem of organized crime in a number of aspects.

There are 12 different titles in this bill.

In the interest of saving time and in view of the fact that there are 3 hours to discuss this and with the hope that we may adjourn sine die before November 3, Mr. Speaker, I will not go into details on the explanation of the bill.

Mr. Speaker, three members of the Committee on the Judiciary filed additional views and three members filed dissenting views. The bill was reported unanimously by the subcommittee and as I understand it by a vote of 32 to 3 by the full committee.

[p. 35191]

Mr. CELLER.

* * * * *

TITLE II—WITNESS IMMUNITY

Title II contains a general Federal immunity statute that affords "use" immunity rather than "transaction" immunity when a witness before a court, grand jury, Federal agency, either House of Congress, or congressional committee or subcommittee asserts his privilege against self-incrimination. This title would displace the privilege against self-incrimination by granting protection intended to be coextensive with the privilege; that is, protection against the use of compelled testimony directly or indirectly against the witness in a criminal proceeding.

[p. 35196]

Mr. McCULLOCH.

* * * * *

The Committee on the Judiciary built upon the work of the other body. The first 10 titles still retain their basic thrust. The first five titles are designed to accomplish one simple purpose: to get facts. Title I establishes special grand juries which may exercise more independence in fulfilling their duties and may sit for a period of time up to 36 months. In attempting to find out the facts, the grand jury may summon witnesses and compel them to talk by granting them immunity against the use of their testimony against them—Title II. If they refuse to talk, they may be held in civil contempt—Title III. If they talk but do not speak the truth, they may be tried for perjury. Title IV eliminates medieval rules of evidence which hobbled prosecution for this crime. And if the witness talks and places his life in jeopardy, title V authorizes the Government to protect him or even to relocate him.

[p. 35197]

* * * * *

Mr. ST. GERMAIN.

The major purpose of the legislation under consideration today is to provide the criminal justice system with the necessary legal tools to get at organized crime. Titles I through VII are aimed at strengthening the evidence gathering process and insuring that the evidence will then be available and admissable at trial. Briefly, title I increases the powers and independence of Federal grand juries investigating organized crime cases; title II consolidates and amends general immunity statutes with the purpose of encouraging those implicated in organized crime cases to testify. Title III increases the penalties available for witnesses who refuse to testify, and title IV would make perjury cases easier to prosecute, in accordance with recommendations of the President's Crime Commission. Title V provides for protected facilities for housing Government witnesses; title VI provides for the taking of pretrial depositions in certain cases; and title VII is aimed at restricting within reason litigation concerning sources of evidence.

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Mr. POFF.

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Title II makes it possible to compel witnesses before the grand juries or elsewhere to testify under a guarantee that neither their testimony nor the fruits of their testimony will be used to prosecute them.

[p. 35200]

Mr. RYAN.

* * * * *

TITLE II

Title II proposes to supplant to absolute immunity granted to those forced to sacrifice their fifth amendment right to remain silent, for transaction, or use, immunity. I have previously expressed my opposition to this departure in the law in my minority views on H.R. 11157, the Federal Immunity of Witnesses Act, which has not come to the floor, but which is incorporated into S. 30 as title II.

[p. 35207]

Both as a matter of law and as a matter of policy, I believe title II raises serious questions. I am appending my views on H.R. 11157—which is the same as title II—in order that these questions may be thoroughly explicated.

[p. 35208]

Mr. BINGHAM.

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There seem to be many things in this bill that we may live to regret. I assume it will be passed, but I would like to commend the three gentlemen who are members of the committee for their eloquent and courageous separate views. I am most impressed with their views, as I am with the objections in the ACLU's letter. The text of that letter follows:

[p. 35212]

* * * * *

TITLE II—IMMUNITY OF WITNESSES

Under the Fifth Amendment, no person may be compelled "in any criminal case to be a witness against himself." Since 1892, it has been the federal rule that in order to compel a person to testify, he must be "afforded absolute immunity against future prosecution for the offense to which the question relates." *Counselman* v. *Hitchcock*, 142 U.S. 547, 586 (1892). Title II would greatly water down that protection, permitting the government to compel the witness to testify in exchange only for a guarantee that that specific testimony will not be used against him, directly or indirectly, in a future criminal trial.

As we outlined in our testimony before the House Judiciary Committee, this lowered standard is not a constitutionally adequate substitute for the privilege against self-incrimination. There are too many ways to make evidence look as if it were independently obtained even though the compelled testimony has really led the government to find it. Thus the defendant will in fact be compelled to contribute to his own prosecution in direct violation of a privilege which the framers of the Constitution thought important enough to include in the Bill of Rights.

[p. 35213]

Mr. POFF.

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TITLE II—GENERAL IMMUNITY

Mr. Chairman, title II of S. 30 replaces some 50 Federal immunity statutes now in use with a single, comprehensive provision to be added to title 18 of the United States Code, to govern grants of immunity in judicial, administrative, and congressional proceedings. As you know, the President's Crime Commission recommended that legislative action be taken regarding immunity for grand jury and court proceedings, and, at the suggestion of the National Commission on the Reform of Federal Criminal Laws, title II has been made to deal comprehensively with the overall problem of immunity grants to facilitate the operations of the three branches of Government. The very fact that this highly significant subject matter is to be treated in a single part of the United States Code, rather than in 50-some different and scattered provisions, should prove of considerable benefit.

Title II marks a notable departure from existing legislation on immunity. Whereas existing legislation has gone beyond the breadth of the fifth amendment privilege by granting transaction immunity — by barring prosecution completely in respect to incriminating testimony given — title II creates a restriction on the direct or indirect use of the compelled testimony; such testimony may not be used in any way in developing a prosecution of the witness for any of his past offenses—he will not be forced directly or indirectly to be a witness against himself — but prosecution itself will not absolutely be barred. You will recall that the President in his message on organized crime commended to the Congress the basic concept of title II. Specifically, he said:

> I commend to the Congress for its consideration . . . [the proposal under which] a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense.

I might add, Mr. Chairman, that the use-restriction immunity is clearly constitutional, taking note particularly of two 1964 Supreme Court decisions, *Malloy* v. *Hogan*, 378 U.S. 1, and *Murphy* v. *Waterfront Commission*, 378 U.S. 52. On the subject of granting immunity in general, I think it very fitting to repeat a comment made in an 1896 Supreme Court opinion:

> Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege (*Brown v. Walker*, 161 U.S. 591, at 605).

Mr. Chairman, the Omnibus Crime Control and Safe Streets Act of 1968 enlarged the bases for grants of immunity: they were to be available in a greater number of proceedings than previously—proceedings involving a greater number of offenses. But title II of S. 30 is not limited to investigations involving any particular Federal violations. Nonetheless, for the Department of Justice and the various administrative agencies, the Attorney General must approve use of the immunity provisions, so that this very important matter of immunizing witnesses will be closely controlled. No longer will any witness automatically receive immunity under statutes that title II will repeal; the witness must always claim his privilege against self-incrimination before immunity will be granted. This eliminates a danger that a witness will be immunized by some oblique testimony relative to a criminal transaction automatically—without any claim of privilege—and hence without forethought being given to the matter by the Government. As Justice White wrote in a concurring opinion in Murphy against Waterfront Commission:

> Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination (at 378 U.S. 107).

Where the witness is before either House of Congress, a grant of immunity must be approved by a majority vote of the Members present, and where the witness is before a joint committee or a committee or subcommittee of either House, an affirmative vote of two-thirds of the full membership of the committee is required. But any such intention to seek an order to compel testimony is to be brought to the attention of the Attorney General at least 10 days before the order is sought, and the title provides that the district court shall defer the issuance of an order up to 20 days as the Attorney General may request. This procedure will allow for studied consultation and a weighing of the value and possible consequences of immunizing a particular witness, which procedure is, I believe, an appropriate means of protecting the overriding public interest regarding grants of immunity.

Mr. Chairman, title II of S. 30 arms the Government with an ability, unique in the history of this Nation, to crack the shell of secrecy surrounding organized crime. While giving the witness all that is guaranteed him under the Constitution, title II means that a witness can no longer invoke a privilege of self-incrimination frivolously or in order to shield other parties and expect the Government to be impotent in the face of such conduct. Afforded the immunity to which he has every right, the witness will have to discharge his civic responsibilities or face sanctions under title III of this legislation.

[p. 35291]

Mr. RAILSBACK.

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TITLE II—GENERAL IMMUNITY

A grand jury subpena can compel the attendance of a witness and the production of books and records, but obtaining the witness' testimony and inspection of the books and records cannot be accomplished at the expense of the privilege against self-incrimination. In order to compel the testimony and not infringe upon the right to avoid self-incrimination, the concept of immunity has arisen whereby the witness can be forced to testify and protected from having his testimony used against him. Historically two types of immunity have been recognized, one is "transaction" immunity and the other is "use" immunity. Under the former, the witness is protected from any prosecution concerning the "transaction" no matter how much independent evidence unrelated to his testimony was uncovered for use against him. Under the "use" immunity, it is still possible to use unrelated evidence for a prosecution so long as that evidence was not directly or indirectly related to the testimony given under immunity.

In keeping with the recommendation of the President's Task Force, this legislation contains a general Federal immunity statute. It provides "use" immunity rather than "transaction" immunity.

Under recent court decisions, it is anticipated that the "use" immunity is constitutionally sufficient. The cases of *Malloy* v. *Hogan*, 378 U.S. 1 and *Murphy* v. *Waterfront Commission*, 378

[p. 35303]

U.S. 52, 1964, seem to clearly sanction "use" immunity. A lengthy discussion of cases and the history of immunity can be found in the Senate committee report (S. Rept. 91-617) at pages 51 et seq.

[p. 35304]

Mr. FULTON.

* * * * *

Title I of the measure provides for grand jury procedures in high-crime areas, providing the grand jury with greater autonomy and permitting its convocations for a longer period of time.

Title II provides for a uniform immunity statute in place of the 90 various statutes that would presently apply.

Title III concerns the treatment of recalcitrant witnesses, who under this provision can be placed in jail during the length of the grand jury meetings.

Title IV would facilitate Federal perjury prosecutions and establish a new false declaration provision.

Title V would provide protected facilities for government witnesses in order to protect their safety.

Title VI would authorize the government to preserve testimony by the use of depositions in criminal proceedings.

Title VII would overrule Supreme Court decisions concerning the gathering and usage of electronic evidence, thereby providing a balanced law in this area.

Title VIII, a multifaceted provision, concerns itself with syndicated gambling.

Title IX develops a new criminal code chapter entitled "Racketeer Influenced and Corrupt Organizations"; it provides an easier standard of proof against organizations believed to be racketeer influenced.

Title X authorizes special sentencing for dangerous offenders, protecting society from the criminal recidivist.

Title XI regulates explosives, their licensing, manufacture and sale.

Title XII establishes a National Commission on Individual Rights, empowered to conduct a comprehensive study and review of relevant Federal laws.

Title XIII contains a severability clause.

[p. 35313]

Mr. STRATTON.

* * * * *

Although the House is voting basically on the measure that was passed in the other body earlier this year, the members and staff of the House Judiciary Committee are to be commended for the long hours of diligent work they spent refining the bill. Some 50-odd changes were made and over 50 amendments were offered. In sum, although I do not agree with all the provisions of the bill, I do think the committee's efforts are well worthy of support, and I urge my colleagues to approve the comprehensive proposals.

The general terms of the proposals are as follows. The first five titles of the act are designed to accomplish one simple purpose; to improve present fact gathering methods in criminal proceedings. Title I establishes special grand juries which may exercise more independence in fulfilling their duties and may sit for a period of time up to 36 months. In attempting to ferret out the facts, the grand jury may summon witnesses and compel them to talk by granting them immunity against the use of their testimony against them—title II. If they refuse to talk, they may be held in civil contempt—title III. And if they give false evidence, they may be tried for perjury. Title IV eliminates medieval rules of evidence which have hobbled the prosecution's ability to cope with this special type of grand jury witness. And if the witness talks and by so doing places his life in jeopardy, title V authorizes the Government to protect him or even to relocate him.

[p. 35321]

The CHAIRMAN. If there are no further amendments to title I, the Clerk will read.

The Clerk read as follows:

TITLE II—GENERAL IMMUNITY

SEC. 201. (a) Title 18, United States Code, is amended by adding immediately after part IV the following new part:

"PART V.—IMMUNITY OF WITNESSES

"Sec.
"6001. Definitions.
"6002. Immunity generally.
"6003. Court and grand jury proceedings.
"6004. Certain administrative proceedings.
"6005. Congressional proceedings.

"§ 6001. Definitions

"As used in this part—

"(1) 'agency of the United States' means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Federal communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

"(2) 'other information' includes any book, paper, document, record, recording, or other material;

"(3) 'proceeding before an agency of the United States' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

"(4) 'court of the United States' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

"§ 6002. Immunity generally

"Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

"(1) a court or grand jury of the United States,

"(2) an agency of the United States, or

"(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury giving a false statement, or otherwise failing to comply with the order.

"§ 6003. Court and grand jury proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6004. Certain administrative proceedings

"(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse or provide other information on the basis of his privilege against self-incrimination.

"§ 6005. Congressional proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify."

[p. 35335]

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following:

"V. Immunity of Witnesses............6001".

SEC. 202. The third sentence of paragraph (b) of section 6 of the Commodity Exchange Act (69 Stat. 160; 7 U.S.C. 15) is amended by striking "49 U.S.C. 12, 46, 47, 48, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses" and by inserting in lieu thereof the following: "(49 U.S.C. § 12), relating to the attendance and testimony of witnesses and the production of documentary evidence,".

SEC. 203. Subsection (f) of section 17 of the United States Grain Standards Act (82 Stat. 768; 7 U.S.C. § 87f(f)), is repealed.

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 205. Subsection (f) of section 13 of the Perishable Agricultural Commodities Act, 1930 (46 Stat. 536; 7 U.S.C. § 499m(f)), is repealed.

SEC. 206. (a) Section 16 of the Cotton Research and Promotion Act (80 Stat. 285; 7 U.S.C. § 2115) is amended by striking "(a)" and by striking subsection (b).

(b) The section heading for such section 16 is amended by striking ": Self-Incrimination".

SEC. 207. Clause (10) of subsection (a) of section 7 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (52 Stat. 847; 11 U.S.C. § 25(a)(10)), is amended by inserting after the first use of the term "testimony" the following language: ", or any evidence which is directly or indirectly derived from such testimony,".

SEC. 208. The fourth sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act (64 Stat. 882; 12 U.S.C. § 1820 (d)), is repealed.

SEC. 209. The seventh paragraph under the center heading "DEPARTMENT OF JUSTICE" in the first section of the Act of February 25, 1903 (32 Stat. 904; 15 U.S.C. § 32), is amended by striking ": *Provided*, That" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 210. The Act of June 30, 1906 (34 Stat. 798; 15 U.S.C. § 33), is repealed.

SEC. 211. The seventh paragraph of section 9 of the Federal Trade Commission Act (38 Stat. 722; 15 U.S.C. § 49), is repealed.

SEC. 212. Subsection (d) of section 21 of the Securities Exchange Act of 1934 (48 Stat. 899; 15 U.S.C. § 78u(d)), is repealed.

SEC. 213. Subsection (c) of section 22 of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. § 77v(c)), is repealed.

SEC. 214. Subsection (e) of section 18 of the Public Utility Holding Company Act of 1935 (49 Stat. 831; 15 U.S.C. § 79r(e)), is repealed.

SEC. 215. Subsection (d) of section 42 of the Investment Company Act of 1940 (54 Stat. 842; 15 U.S.C. § 80a-41(d)), is repealed.

SEC. 216. Subsection (d) of section 209 of the Investment Advisers Act of 1940 (54 Stat. 853; 15 U.S.C. § 80b-9(d)), is repealed.

SEC. 217. Subsection (c) of section 15 of the China Trade Act, 1922 (42 Stat. 953; 15 U.S.C. § 155(c)), is repealed.

SEC. 218. Subsection (h) of section 14 of the Natural Gas Act (52 Stat. 828; 15 U.S.C. § 717m(h)), is repealed.

SEC. 219. The first proviso of section 12 of the Act entitled "An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use," approved July 12, 1960 (74 Stat. 379; 15 U.S.C. § 1271), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 220. Subsection (e) of section 1415 of the Interstate Land Sales Full Disclosure Act (82 Stat. 596; 15 U.S.C. § 1714(e)), is repealed.

SEC. 221. Subsection (g) of section 307 of the Federal Power Act (49 Stat. 856; 16 U.S.C. § 825f(g)), is repealed.

SEC. 222. Subsection (b) of section 835 of title 18, United States Code, is amended by striking the third sentence thereof.

SEC. 223. (a) Section 895 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 42 of such title is amended by striking the item relating to section 895.

SEC. 224. (a) Section 1406 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 68 of such title is amended by striking the item relating to section 1406.

SEC. 225 Section 1954 of title 18, United States Code, is amended by striking "(a) Whoever" and inserting in lieu thereof "Whoever" and by striking subsection (b) thereof.

SEC. 226. The second sentence of subsection (b), section 2424, title 18, United States Code, is amended by striking "but no person" and all that follows in that subsection and inserting in lieu thereof: "but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

SEC. 227. (a) Section 2514 of title 18, United States Code, is repealed effective four years after the effective date of this Act.

(b) The table of sections of chapter 119 of such title is amended by striking the item relating to section 2514.

SEC. 228. (a) Section 3486 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 223 of such title is amended by striking the item relating to section 3486.

SEC. 229. Subsection (e) of section 333 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. § 1333(e)), is amended by striking ": Provided That" and all that follows in that subsection and inserting in lieu thereof a period.

SEC. 230. The first proviso of section 703 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1057; 21 U.S.C. § 373), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 231. (a) Section 4874 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (D) of chapter 39 of such Code is amended by striking the item relating to section 4874.

SEC. 232. Section 7493 of the Internal Revenue Code of 1954 is repealed.

SEC. 233. The table of sections of part III of subchapter (E), of chapter 76 of the Internal Revenue Code of 1954 is amended by striking the item relating to section 7493.

SEC. 234. Paragraph (3) of section 11 of the Labor Management Relations Act, 1947 (49 Stat. 455; 29 U.S.C. § 161(3)), is repealed.

SEC. 235. The third sentence of section 4 of the Act entitled "An Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable, and for other purposes", approved August 31, 1935 (49 Stat. 671; 33 U.S.C. § 506), is repealed.

SEC. 236. Subsection (f) of section 205 of the Social Security Act (42 U.S.C. § 405 (f)) is repealed.

SEC. 237. Paragraph c of section 161 of the Atomic Energy Act of 1954 (68 Stat. 948; 42 U.S.C. § 2201(c)), is amended by striking the third sentence thereof.

SEC. 238. The last sentence of the first paragraph of subparagraph (h) of the paragraph designated "Third" of section 7 of the Railway Labor Act (44 Stat. 582; 45 U.S.C. § 157), is repealed.

SEC. 239. Subsection (c) of section 12 of the Railroad Unemployment Insurance Act (52 Stat. 1107; 45 U.S.C. § 362(c)), is repealed.

SEC. 240. Section 23 of the Shipping Act of 1916 (39 Stat. 737; 46 U.S.C. § 827), is repealed.

SEC. 241. Subsection (c) of section 214 of the Merchant Marine Act, 1936 (49 Stat. 1991; 46 U.S.C. § 1124(c)), is repealed.

SEC. 242. Subsection (i) of section 409 of the Communications Act of 1934 (48 Stat. 1096; 47 U.S.C. § 409(1)), is repealed.

SEC. 243. (a) The second sentence of section 9 of the Interstate Commerce Act (24 Stat. 382; 49 U.S.C. § 9), is amended by striking "; the claim" and all that follows in that sentence and inserting in lieu thereof a period.

(b) Subsection (a) of section 316 of the Interstate Commerce Act (54 Stat. 946; 49 U.S.C. § 916(a)), is amended by striking the comma following "part I" and by striking ", and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

(c) Subsection (a) of section 417 of the Interstate Commerce Act (49 U.S.C. § 1017 (a)), is amended by striking the comma after "such provisions" and by striking ", and of the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

SEC. 244. The third sentence of section 3 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the

States", approved February 19, 1903 (32 Stat. 848; 49 U.S.C. § 43), is amended by striking "; the claim" and all that follows in that sentence down through and including "*Provided*, That the provisions" and inserting in lieu thereof ". The provisions".

Sec. 245. The first paragraph of the Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. § 46), is repealed.

Sec. 246. Subsection (i) of section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792; 49 U.S.C. § 1484(i)), is repealed.

Sec. 247. The ninth sentence of subsection (c) of section 13 of the Internal Security Act of 1950 (81 Stat. 768; 50 U.S.C. § 792(c)), is repealed.

Sec. 248. Section 1302 of the Second War Powers Act of 1942 (56 Stat. 185; 50 U.S.C. App. § 643a), is amended by striking the fourth sentence thereof.

Sec. 249. Paragraph (4) of subsection (a) of section 2 of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (54 Stat. 676; 50 U.S.C. App. § 1152(a)(4)), is amended by striking the fourth sentence thereof.

Sec. 250. Subsection (d) of section 6 of the Export Control Act of 1949 (63 Stat. 8; 50 U.S.C. App. § 2026(b)), is repealed.

Sec. 251. Subsection (b) of section 705 of the Act of September 8, 1950, to amend the Tariff Act of 1930 (64 Stat. 816; 50 U.S.C. § 2155(b)), is repealed.

Sec. 252. Section 23-545 of the District of Columbia Code is repealed.

Sec. 253. Section 42 of the Act of October 9, 1940, 54 Stat. 1082 (D.C. Code, sec. 35-1346), is repealed.

[p. 35336]

Sec. 254. Section 2 of the Act of June 19, 1934, 48 Stat. 1176 (section 35-802, District of Columbia Code), is repealed.

Sec. 255. Section 29 of the Act of March 4, 1922, 42 Stat. 414 (section 35-1129, District of Columbia Code), is repealed.

Sec. 256. Section 9 of the Act of February 7, 1914, 38 Stat. 282, as amended (section 22-2721, District of Columbia Code), is repealed.

Sec. 257. Section 5 of the Act of February 7, 1914, 38 Stat. 281 (section 22–2717, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

Sec. 258. Section 8 of the Act of February 7, 1914, 38 Stat. 282 (section 22–2720, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

Sec. 259. In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act), is to that extent amended or repealed.

Sec. 260. The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act, shall take effect on the sixtieth day following the date of the enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.

Mr. CELLER (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

[p. 35337]

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute.

The committee substitute amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ROONEY of New York, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 30) relating to the control of organized crime in the United States, pursuant to House Resolution 1235, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. GERALD R. FORD. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant-at-Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 341, nays 26, not voting 63, as follows:

* * * * *

[p. 35363]

So the bill was passed.

[p. 35364]

1.1i (3) (d) Oct. 12: Debated, Senate concurred in House amendment, pp. 36280–36283, 36293–36294, 36296

ORGANIZED CRIME CONTROL ACT OF 1970

Mr. McCLELLAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 30.

The PRESIDING OFFICER (Mr. SPARKMAN) laid before the Senate the amendment of the House of Representatives to the bill (S. 30) relating to the control of organized crime in the United States which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Organized Crime Control Act of 1970."

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[p. 36280]

TITLE II—GENERAL IMMUNITY

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"§ 6001. Definitions

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"(1) 'agency of the United States' means any executive department as defined in section 101 of title 5. United States Code, a military department as defined in section 102 of title, 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53

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Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

"(2) 'other information' includes any book, paper, document, record, recording, or other material;

"(3) 'proceeding before an agency of the United States' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

"(4) 'court of the United States' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

"§ 6002. Immunity generally

"Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

"(1) a court or grand jury of the United States,

"(2) an agency of the United States, or

"(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"§ 6003. Court and grand jury proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6004. Certain administrative proceedings

"(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6005. Congressional proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify."

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following:

"V. Immunity of Witnesses ....6001".

SEC. 202. The third sentence of paragraph (b) of section 6 of the Commodity Exchange Act (69 Stat. 160; 7 U.S.C. 15) is amended by striking "49 U.S.C. 12, 46, 47, 48, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses" and by inserting in lieu thereof the following: "(49 U.S.C. § 12), relating to the attendance and testimony of witnesses and the production of documentary evidence,".

SEC. 203. Subsection (f) of section 17 of the United States Grain Standards Act (82 Stat. 768; 7 U.S.C. § 87f(f)), is repealed.

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

SEC. 205. Subsection (f) of section 13 of the

Perishable Agricultural Commodities Act, 1930 (46 Stat. 536; 7 U.S.C. § 499m(f)), is repealed.

Sec. 206. (a) Section 16 of the Cotton Research and Promotion Act (80 Stat. 285; 7 U.S.C. § 2115) is amended by striking "(a)" and by striking subsection (b).

(b) The section heading for such section 16 is amended by striking ": Self-Incrimination".

Sec. 207. Clause (10) of subsection (a) of section 7 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (52 Stat. 847; 11 U.S.C. § 25(a) (10)), is amended by inserting after the first use of the term "testimony" the following language: ", or any evidence which is directly or indirectly derived from such testimony,".

Sec. 208. The fourth sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act (64 Stat. 882; 12 U.S.C. § 1820 (d)), is repealed.

Sec. 209. The seventh paragraph under the centered heading "DEPARTMENT OF JUSTICE" in the first section of the Act of February 25, 1903 (32 Stat. 904; 15 U.S.C. § 32), is amended by striking ": *Provided*, That" and all that follows in that paragraph and inserting in lieu thereof a period.

Sec. 210. The Act of June 30, 1906 (34 Stat. 798; 15 U.S.C. § 33), is repealed.

Sec. 211. The seventh paragraph of section 9 of the Federal Trade Commission Act (38 Stat. 722; 15 U.S.C. § 49), is repealed.

Sec. 212. Subsection (d) of section 21 of the Securities Exchange Act of 1934 (48 Stat. 899; 15 U.S.C. § 78u(d)), is repealed.

Sec. 213. Subsection (c) of section 22 of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. § 77v(c)), is repealed.

Sec. 214. Subsection (e) of section 18 of the Public Utility Holding Company Act of 1935 (49 Stat. 831; 15 U.S.C. § 79r(e)), is repealed.

Sec. 215. Subsection (d) of section 42 of the Investment Company Act of 1940 (54 Stat. 842; 15 U.S.C. § 80a-41(d)), is repealed.

Sec. 216. Subsection (d) of section 209 of the Investment Advisers Act of 1940 (54 Stat. 853; 15 U.S.C. § 80b-9(d)), is repealed.

Sec. 217. Subsection (c) of section 15 of the China Trade Act, 1922 (42 Stat. 953; 15 U.S.C. § 155(c)), is repealed.

Sec. 218. Subsection (h) of section 14 of the Natural Gas Act (52 Stat. 828; 15 U.S.C. § 717m(h)), is repealed.

Sec. 219. The first proviso of section 12 of the Act entitled "An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use," approved July 12, 1960 (74 Stat. 379; 15 U.S.C. § 1271), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

Sec. 220. Subsection (e) of section 1415 of the Interstate Land Sales Full Disclosure Act (82 Stat. 596; 15 U.S.C. § 1714(e)), is repealed.

Sec. 221. Subsection (g) of section 307 of the Federal Power Act (49 Stat. 856; 16 U.S.C. § 825f(g)), is repealed.

Sec. 222. Subsection (b) of section 835 of title 18, United States Code, is amended by striking the third sentence thereof.

Sec. 223. (a) Section 895 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 42 of such title is amended by striking the item relating to section 895.

Sec. 224. (a) Section 1406 of title 18, United States Code, is repealed.

(b) the table of sections of chapter 68 of such title is amended by striking the item relating to section 1406.

Sec. 225. Section 1954 of title 18, United States Code, is amended by striking "(a) Whoever" and inserting in lieu thereof "Whoever" and by striking subsection (b) thereof.

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Sec. 226. The second sentence of subsection (b), section 2424, title 18, United States Code, is amended by striking "but no person" and all that follows in that subsection and inserting in lieu thereof: "but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

Sec. 227. (a) Section 2514 of title 18, United States Code, is repealed effective four years after the effective date of this Act.

(b) The table of sections of chapter 119 of such title is amended by striking the item relating to section 2514.

Sec. 228. (a) Section 3486 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 223 of such title is amended by striking the item relating to section 3486.

Sec. 229. Subsection (e) of section 333 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. § 1333(e)), is amended by striking ": Provided, That" and all that follows in that subsection and inserting in lieu thereof a period.

Sec. 230. The first proviso of section 703 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1057; 21 U.S.C. § 373), is amended by inserting after "section" the following language: ", or any evidence which is directly or indirectly derived from such evidence,".

Sec. 231. (a) Section 4874 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (D) of chapter 39 of such Code is amended by striking the item relating to section 4874.

Sec. 232. Section 7493 of the Internal Revenue Code of 1954 is repealed.

Sec. 233. The table of sections of part III of subchapter (E) of chapter 76 of the Internal Revenue Code of 1954 is amended by striking the item relating to section 7493.

Sec. 234. Paragraph (3) of section 11 of the Labor Management Relations Act, 1947 (49 Stat. 455; 29 U.S.C. § 161(3)), is repealed.

Sec. 235. The third sentence of section 4 of the Act entitled "An Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable, and for other purposes", approved August 21, 1935 (49 Stat. 671; 33 U.S.C. § 506), is repealed.

Sec. 236. Subsection (f) of section 205 of the Social Security Act (42 U.S.C. § 405(f)) is repealed.

Sec. 237. Paragraph c of section 161 of the Atomic Energy Act of 1954 (68 Stat. 948; 42 U.S.C. § 2201(c)), is amended by striking the third sentence thereof.

Sec. 238. The last sentence of the first paragraph of subparagraph (h) of the paragraph designating "Third" of section 7 of the Railway Labor Act (44 Stat. 582; 45 U.S.C. § 157), is repealed.

Sec. 239. Subsection (c) of section 12 of the Railroad Unemployment Insurance Act (52 Stat. 1107; 45 U.S.C. § 362(c)), is repealed.

Sec. 240. Section 28 of the Shipping Act of 1916 (39 Stat. 737; 46 U.S.C. § 827), is repealed.

Sec. 241. Subsection (c) of section 214 of the Merchant Marine Act, 1936 (49 Stat. 1991; 46 U.S.C. § 1124(c)), is repealed.

Sec. 242. Subsection (i) of section 409 of the Communications Act of 1934 (48 Stat. 1096; 47 U.S.C. § 409 (l)), is repealed.

Sec. 243. (a) The second sentence of section 9 of the Interstate Commerce Act (24 Stat. 382; 49 U.S.C. § 9), is amended by striking "; the claim" and all that follows in that sentence and inserting in lieu thereof a period.

(b) Subsection (a) of section 316 of the Interstate Commerce Act (54 Stat. 946; 49 U.S.C. § 916(a)), is amended by striking the comma following "part I" and by striking ", and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

(c) Subsection (a) of section 417 of the Interstate Commerce Act (49 U.S.C. § 1017 (a)), is amended by striking the comma after "such provisions" and by striking ", and of the Immunity Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

Sec. 244. The third sentence of section 3 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 848; 49 U.S.C. § 43), is amended by striking "; the claim" and all that follows in that sentence down through and including "Provided, That the provisions" and inserting in lieu thereof ". The provisions".

Sec. 245. The first paragraph of the Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. § 46), is repealed.

Sec. 246. Subsection (i) of section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792; 49 U.S.C. § 1484(i)), is repealed.

Sec. 247. The ninth sentence of subsection (c) of section 13 of the Internal Security Act of 1950 (81 Stat. 768; 50 U.S.C. § 792(c)), is repealed.

Sec. 248. Section 1302 of the Second War Powers Act of 1942 (56 Stat. 185; 50 U.S.C. App. § 463a), is amended by striking the fourth sentence thereof.

Sec. 249. Paragraph (4) of subsection (a) of section 2 of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (54 Stat. 676; 50 U.S.C. App. § 1152(a)(4)), is amended by striking the fourth sentence thereof.

Sec. 250. Subsection (d) of section 6 of the Export Control Act of 1949 (63 Stat. 8; 50 U.S.C. App. § 2026 (b)), is repealed.

Sec. 251. Subsection (b) of section 705 of the Act of September 8, 1950, to amend the Tariff Act of 1930 (64 Stat. 816; 50 U.S.C. § 2155(b)), is repealed.

Sec. 252. Section 23-545 of the District of Columbia Code is repealed.

Sec. 253. Section 42 of the Act of October 9, 1940, 54 Stat. 1082 (D.C. Code, sec. 35-1346), is repealed.

Sec. 254. Section 2 of the Act of June 19, 1934, 48 Stat. 1176 (section 35-802, District of Columbia Code), is repealed.

Sec. 255. Section 29 of the Act of March 4, 1922, 42 Stat. 414 (section 35-1129, District of Columbia Code), is repealed.

Sec. 256. Section 9 of the Act of February 7, 1914, 38 Stat. 282, as amended (section 22-2721, District of Columbia Code), is repealed.

Sec. 257. Section 5 of the Act of February 7, 1914, 38 Stat. 281 (section 22–2717, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

Sec. 258. Section 8 of the Act of February 7, 1914, 38 Stat. 282 (section 22–2720, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

Sec. 259. In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act), is to that extent amended or repealed.

Sec. 260. The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act, shall take effect on the sixtieth day following the date of the enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.

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Mr. McCLELLAN.

* * * * *

Title II. General Immunity—creates a single uniform witness immunity statute which will enable the Government in any court, administrative, or legislative proceeding to obtain the testimony of a witness who otherwise refuses to testify on the ground that he might incriminate himself. The immunity provided protects the witness from the use against him of his compelled testimony and its fruits in any prosecution for offenses committed

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prior to the time he testified, but does not foreclose prosecution for his past criminal offenses upon the basis of entirely independent evidence.

* * * * *

Mr. DOLE.

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This and the other titles in S. 30, ranging from special grand juries and a comprehensive immunity provision to a central attack on illegal gambling and enhanced sentences for special dangerous offenders, has emerged with few significant changes by the House. We would dispense with the time-consuming and unnecessary Senate-House conference. Instead we should unanimously accept S. 30 as amended in the House and send it directly to President Nixon for his signature.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas.

The motion was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLELLAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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1.1j POISON PREVENTION PACKAGING ACT OF 1970

December 30, 1970, P.L. 91–601, 84 Stat. 1670

(See "Pesticides 1.6—1.6a (4) (c)" for text and legislative history.)

1.2 THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AS AMENDED

21 U.S.C. §§346, 346a, 348

Parallel Citations

Statutes At Large §	21 U.S.C. §
406	346
408	346a
409	348

§ 346. Tolerances for poisonous or deleterious substances in food; regulations

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) (A) of section 342(a) of this title; but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) (A) of section 342(a) of this title. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 342(a) of this title. In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary[1] shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (June 25, 1938, ch. 675, § 406, 52 Stat. 1049; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 6, 1958, Pub. L. 85-929, § 3(c), 72 Stat. 1785; July 12, 1960, Pub. L. 86-618, title I, § 103(a) (1), 74 Stat. 398.)

§ 346a. Tolerances for pesticide chemicals in or on raw agricultural commodities

(a) Conditions of safety

Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 342 (a) of this title unless—

(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Administrator of the Environmental Protection Agency under this section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Administrator under this section.

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[1] Functions of the Secretary of Health, Education, and Welfare under this section, together with authority to monitor compliance with the tolerances, to review the effectiveness of surveillance and enforcement, and to provide technical assistance to the States and conduct research under this Chapter and Chapter 6A of Title 42, were transferred to the Administrator of the Environmental Protection Agency, by Reorg. Plan No. 3 of 1970, § 2(a) (4), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 342 (a) of this title.

(b) Establishment of tolerances

The Administrator shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Administrator shall give appropriate consideration, among other relevant factors, (1) to the necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion submitted with a certification of usefulness under subsection (*l*) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Administrator may establish the tolerance applicable with respect to the use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Administrator does not justify the establishment of a greater tolerance.

(c) Exemptions

The Administrator shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

(d) Regulations pursuant to petition; publication of notice; time for issuance; referral to advisory committees; effective date; hearings

(1) Any person who has registered, or who has submitted an application for the registration of, a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the

Administrator a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such pesticide, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical;

(B) the amount, frequency, and time of application of the pesticide chemical;

(C) full reports of investigations made with respect to the safety of the pesticide chemical;

(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

(E) practicable methods for removing residue which exceeds any proposed tolerance;

(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

(G) reasonable grounds in support of the petition.

Samples of the pesticide chemical shall be furnished to the Administrator upon request. Notice of the filing of such petition shall be published in general terms by the Administrator within thirty days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.

(2) Within ninety days after a certification of usefulness under subsection (*l*) of this section with respect to the pesticide chemical named in the petition, the Administrator shall, after giving due consideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

unless within such ninety-day period the person filing the petition requests that the petition be referred to an advisory committee or the Administrator within such period otherwise deems such referral necessary, in either of which events the provisions of paragraph (3) of this subsection shall apply in lieu thereof.

(3) In the event that the person filing the petition requests, within ninety days after a certification of usefulness under subsection (*l*) of this section with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory

committee, or in the event the Administrator within such period otherwise deems such referral necessary, the Administrator shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Administrator and other data before it, certify to the Administrator a report and recommendations on the proposal in the petition to the Administrator, together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Administrator shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

(5) Within thirty days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e) of this section, may file objections thereto with the Administrator, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have two weeks to make a written reply to the objections. The Administrator shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 1006 (c) of Title 5. The National Academy of Sciences shall designate a member of the advisory committee to appear and testi-

fy at any such hearing with respect to the report and recommendations of such committee upon request of the Administrator, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Administrator shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Administrator by an advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the Administrator finds that emergency conditions exist necessitating an earlier effective date, in which event the Administrator shall specify in the order his findings as to such conditions.

(e) Regulations pursuant to Administrator's proposals

The Administrator may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Administrator may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Administrator shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Administrator and other data before it, certify to the Administrator a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Administrator may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) of subsection (d) of this section.

(f) Data submitted as confidential

All data submitted to the Administrator or to an advisory committee in support of a petition under this section shall be considered confidential by the Administrator and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Administrator or by an advisory committee in the carrying out of their official duties under this section.

(g) Advisory committees; appointment; composition; compensation; clerical assistance

Whenever the referral of a petition or proposal to an advisory committee is requested under this section, or the Administrator otherwise deems such referral necessary the Administrator shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from landgrant colleges. The size of the committee shall be determined by the Administrator. Members of an advisory committee shall receive compensation and travel expenses in accordance with subsection (b)(5)(D) of section 376 of this title. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Administrator shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(h) Right of consultation

A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Environmental Protection Agency, shall have the right to consult with any advisory committee provided for in subsection (g) of this section in connection with the petition or proposal.

(i) Judicial review

(1) In a case of actual controversy as to the validity of any order under subsections (d)(5), (e), or *(l)* of this section any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) In the case of a petition with respect to an order under subsection (d)(5) or (e) of this section, a copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee.

(3) In the case of a petition with respect to an order under subsection *(l)* of this section, a copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Administrator may modify his findings as

to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(j) Temporary tolerances

The Administrator may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Administrator shall give due regard to the necessity for experimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

(k) Regulations based on public hearings before January 1, 1953

Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 346(a) of this title upon the basis of public hearings instituted before January 1, 1953, in accordance with section 371(a) of this title, shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m) of this section.

(l) Pesticides under Federal Insecticide, Fungicide, and Rodenticide Act; functions of Administrator of the Environmental Protection Agency; certifications; hearing; time limitation; opinion; regulations

The Administrator, upon request of any person who has registered, or who has submitted an application for the registration of, a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d)(1) of this section with respect to a pesticide chemical which constitutes, or is an ingredient of, such pesticide, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Administrator deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Administrator takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Administrator to certify on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Administrator may by order make the certification as proposed. In the event that the action described in clause (A) or (C) is taken, the Administrator shall by order make the certification as proposed with respect to such parts thereof as are requested. It[1] the event a hearing is requested, the Administrator shall provide opportunity for a prompt hearing. The certification of the Administrator as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Administrator exceed one hundred and sixty days. The Administrator shall submit with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Administrator, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

(m) Amendment of regulations

The Administrator shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees.

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[1] So in original. Probably should read "In."

(n) Guaranties

The provisions of section 333 (c) of this title with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section.

(o) Payment of fees; services or functions as conditioned on; waiver or refund of fees

The Administrator shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Administrator's functions under this section. Under such regulations, the performance of the Administrator's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) The acceptance of filing of a petition submitted under subsection (d) of this section; (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5) of this section; or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2) of this section. Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Administrator such waiver or refund is equitable and not contrary to the purposes of this subsection. (June 25, 1938, ch. 675, § 408, as added July 22, 1954, ch. 559, § 3, 68 Stat. 511, and amended Aug. 28, 1958, Pub. L. 85–791, § 20, 72 Stat. 947; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(d)(1), 84 Stat. 1311; 1970 Reorg, Plan No. 3, § 2(a)(4), (8)(ii), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat.—.)

§ 348. Food additives

(a) Unsafe food additives; exception for conformity with exemption or regulation

A food additive shall, with respect to any particular use or intended use of such additives, be deemed to be unsafe for the purposes of the application of clause (2) (C) of section 342 (a) of this title, unless—

(1) it and its use or intended use conform to the terms of an exemption which is in effect pursuant to subsection (i) of this section; or

(2) there is in effect, and it and its use or intended use are in conformity with, a regulation issued under this section prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of section 342 (a) of this title.

(b) Petition for regulation prescribing conditions of safe use; contents; description of production methods and controls; samples; notice of regulation

(1) Any person may, with respect to any intended use of a food additive, file with the Secretary a petition proposing the issuance of a regulation prescribing the conditions under which such additive may be safely used.

(2) Such petition shall, in addition to any explanatory or supporting data, contain—

(A) the name and all pertinent information concerning such food additive, including, where available, its chemical identity and composition;

(B) a statement of the conditions of the proposed use of such additive, including all directions, recommendations, and suggestions proposed for the use of such additive, and including specimens of its proposed labeling;

(C) all relevant data bearing on the physical or other technical effect such additive is intended to produce, and the quantity of such additive required to produce such effect;

(D) a description of practicable methods for determining the quantity of such additive in or on food, and any substance formed in or on food, because of its use; and

(E) full reports of investigations made with respect to the safety for use of such additive, including full information as to the methods and controls used in conducting such investigations.

(3) Upon request of the Secretary, the petitioner shall furnish (or, if the petitioner is not the manufacturer of such additive, the petitioner shall have the manufacturer of such additive furnish,

without disclosure to the petitioner) a full description of the methods used in, and the facilities and controls used for, the production of such additive.

(4) Upon request of the Secretary, the petitioner shall furnish samples of the food additive involved, or articles used as components thereof, and of the food in or on which the additive is proposed to be used.

(5) Notice of the regulation proposed by the petitioner shall be published in general terms by the Secretary within thirty days after filing.

(c) Approval or denial of petition; time for issuance of orders; evaluation of data; factors

(1) The Secretary shall—

(A) by order establish a regulation (whether or not in accord with that proposed by the petitioner) prescribing, with respect to one or more proposed uses of the food additive involved, the conditions under which such additive may be safely used (including, but not limited to, specifications as to the particular food or classes of food in or in which such additive may be used, the maximum quantity which may be used or permitted to remain in or on such food, the manner in which such additive may be added to or used in or on such food, and any directions or other labeling or packaging requirements for such additive deemed necessary by him to assure the safety of such use), and shall notify the petitioner of such order and the reasons for such action; or

(B) by order deny the petition, and shall notify the petitioner of such order and of the reasons for such action.

(2) The order required by paragraph (1) (A) or (B) of this subsection shall be issued within ninety days after the date of filing of the petition, except that the Secretary may (prior to such ninetieth day), by written notice to the petitioner, extend such ninety-day period to such time (not more than one hundred and eighty days after the date of filing of the petition) as the Secretary deems necessary to enable him to study and investigate the petition.

(3) No such regulation shall issue if a fair evaluation of the data before the Secretary—

(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to the use of a substance as an ingredient of feed for animals which are raised for food production, if the Secretary finds (i) that, under the conditions of use and feeding specified in proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended, and (ii) that no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations, which regulations shall not be subject to subsections (f) and (g) of this section) in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animal; or

(B) shows that the proposed use of the additive would promote deception of the consumer in violation of this chapter or would otherwise result in adulteration or in misbranding of food within the meaning of this chapter.

(4) If, in the judgment of the Secretary, based upon a fair evaluation of the data before him, a tolerance limitation is required in order to assure that the proposed use of an additive will be safe, the Secretary—

(A) shall not fix such tolerance limitation at a level higher than he finds to be reasonably required to accomplish the physical or other technical effect for which such additive is intended; and

(B) shall not establish a regulation for such proposed use if he finds upon a fair evaluation of the data before him that such data do not establish that such use would accomplish the intended physical or other technical effect.

(5) In determining, for the purposes of this section, whether a proposed use of a food additive is safe, the Secretary shall consider among other relevant factors—

(A) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive;

(B) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and

(C) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data.

(d) Regulation issued on Secretary's initiative

The Secretary may at any time, upon his own initiative, propose the issuance of a regulation prescribing, with respect to any particular use of a food additive, the conditions under which such additive may be safely used, and the reasons therefor. After the thirtieth day following publication of such a proposal, the Secretary may by order establish a regulation based upon the proposal.

(e) Publication and effective date of orders

Any order, including any regulation established by such order, issued under subsection (c) or (d) of this section, shall be published and shall be effective upon publication, but the Secretary may stay such effectiveness if, after issuance of such order, a hearing is sought with respect to such order pursuant to subsection (f) of this section.

(f) Objections and public hearing; basis and contents of order; statement

(1) Within thirty days after publication of an order made pursuant to subsection (c) or (d) of this section, any person adversely affected by such an order may file objections thereto with the Secretary, specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. The Secretary shall, after due notice, as promptly as possible hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. As soon as practicable after completion of the hearing, the Secretary shall by order act upon such objections and make such order public.

(2) Such order shall be based upon a fair evaluation of the entire record at such hearing, and shall include a statement setting forth in detail the findings and conclusions upon which the order is based.

(3) The Secretary shall specify in the order the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(g) Judicial review

(1) In a case of actual controversy as to the validity of any order issued under subsection (f) of this section, including any order thereunder with respect to amendment or repeal of a regulation issued under this section, any person who will be adversely

affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm or set aside the order complained of in whole or in part. Until the filing of the record the Secretary may modify or set aside his order. The findings of the Secretary with respect to questions of fact shall be sustained if based upon a fair evaluation of the entire record at such hearing. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(3) The court, on such judicial review, shall not sustain the order of the Secretary if he failed to comply with any requirement imposed on him by subsection (f) (2) of this section.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order.

(h) Amendment or repeal of regulations

The Secretary shall by regulation prescribe the procedure by which regulations under the foregoing provisions of this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulations.

(i) Exemptions for investigational use

Without regard to subsections (b) to (h), inclusive, of this section, the Secretary shall by regulation provide for exempting from the requirements of this section any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in his opinion such exemption is consistent with the public health. (June 25, 1938, ch. 675, § 409, as added Sept. 6, 1958, Pub. L. 85–929, § 4, 72 Stat. 1785, and amended June 29, 1960, Pub. L. 86–546, § 2, 74 Stat. 255; Oct. 10, 1962, Pub. L. 87–781, title I, § 104(f) (1), 76 Stat. 785, amended Oct. 21, 1972, Pub. L. 92–516, §27(3), 86 Stat. 998.)[1]

1.2a FOOD, DRUG, AND COSMETIC ACT.

June 30, 1906, P.L. 59–384, 34 Stat. 768

AN ACT

CHAP. 3915.—An Act For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any article of food or drug which is adulterated or misbranded, within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided*, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.

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[1] All functions formerly vested in the Secretary of Health, Education, and Welfare concerning establishment of tolerances for pesticide chemicals under this section, together with authority to monitor compliance with the tolerances, to review the effectiveness of surveillance and enforcement, and to provide technical assistance to the States and to conduct research under this Chapter and Chapter 6A of Title 42, were transferred to the Administrator of the Environmental Protection Agency, by Reorg. Plan No. 3 of 1970, § 2(a) (4), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat.

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make [p. 768] uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

SEC. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

SEC. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

SEC. 6. That the term "drug," as used in this Act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

SEC. 7. That for the purposes of this Act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National

Formulary official at the time of investigation: *Provided*, That no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

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Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded:

In case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, canabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

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Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided,* That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further.* That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding.

SEC. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this Act.

SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: *Provided, however,* That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the [p. 771] owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

Sec. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further,* That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall contitute a lien against any future importation made by such owner or consignee.

Sec. 12. That the term "Territory" as used in this Act shall include the insular possessions of the United States. The word "person" as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

SEC. 13. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and seven.

Approved, June 30, 1906.

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1.2a (1) SENATE COMMITTEE ON MANUFACTURE

S. REP. No. 8, 59th Cong., 1st Sess. (1905)

MANUFACTURE, SALE, ETC., OF ADULTERATED FOODS, ETC.

DECEMBER 14, 1905.—Ordered to be printed.

Mr. HEYBURN, from the Committee on Manufactures, submitted the following

REPORT

[To accompany S. 88.]

The Committee on Manufactures, to whom was referred the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes, have considered the same and recommend the passage of the bill, with the following amendments:

On page 3, line 11, after the word "personally," insert "responsible for such violation."

In line 13, page 3, strike out the word "each" and insert in lieu thereof the word "the." In the same line, on page 3, insert after the word "corporation" the words "directly responsible therefor."

In line 22, page 10, strike out the word "it" and insert the words "such article."

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1.2a (2) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H.R. REP. No. 2118 (parts 1 & 2), 59th Cong., 1st Sess. (1906)

PURE FOOD

Part 1

MARCH 7, 1906.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MANN, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 88.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bills, H.R. 4527, 7018, 12071, 13859, and S. 88, beg leave to report and recommend that the said House bills be laid on the table.

H.R. 4527 is the bill known as the "Hepburn pure-food bill," and is similar to the bill which was reported to the House on January 18, 1904, and which was passed by the House.

Your committee has perfected the Hepburn bill by various amendments and recommends that Senate bill 88 be amended by striking out all after the enacting clause and substituting the Hepburn bill as perfected by the committee. The perfected Hepburn bill, offered as a substitute for the Senate bill, is set forth in full at the end of this report.

The bill as recommended for passage proposes to regulate to a certain extent the traffic in drugs and foods in the District of Columbia, in the Territories, and insular possessions, also when imported into the United States or intended for export, and in interstate commerce, under rules and regulations to be made in accordance with the provisions of the bill by the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor.

It forbids the importation, or the shipment from one State to another, or the offering for sale in the District of Columbia and the Territories of articles declared by the act to be adulterated or misbranded.

* * * * * * *

DEFINITIONS

[p. 1]

WHEN NOT ADULTERATED OR MISBRANDED

It is provided, however, that an article of food shall not be considered adulterated or misbranded if it does not contain any added poisonous or deleterious ingredients in the following cases:

First. In the case of mixtures or compounds, known as articles of food under their own distinctive names and not an imitation of or offered for sale under the distinctive name of another article, provided the label or brand shall contain a statement where the article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged, so as to plainly indicate that they are compounds, imitations, or blends. And in this connection the bill describes the word "blend" as used therein to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients. It is further provided that manufacturers of proprietary articles which contain no unwholesome added ingredient shall not be required to disclose their trade formulas except in so far as may be necessary to prevent adulteration or misbranding.

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STANDARDS OF FOOD

We realize that it is not possible for Congress to determine the wholesomeness or unwholesomeness of each food product, or to fix by legislative act the standard which shall be accepted as complying with well-known names of food articles. We realize that in the end the determination of the standard of a food article under a given name may be one to be settled by the courts. It is, however, essential to the success and operation of any pure-food measure that standards of food products shall be arrived at for the guidance of the officials charged with the administration of the law and often for the information of the courts.

One of the principal objects of a national pure-food law is to obtain uniformity of food standards among the States, which are supreme within their own borders. The intention of the makers of the Constitution and the founders of the Republic that commerce between the States should be free and unhampered has been largely nullified as to food products by the varying requirements as to standards and labels in different States. In one State one standard may be required for a named article and in the adjoining State a different standard fixed; and where the same standard is agreed upon in a group of States for precisely the same article different labels may be required in each of them, so that the producer or manufacturer is compelled to not only have complete knowledge of the various State laws, but under penalty is required to carefully see to it that a package of goods intended to meet the requirements of one State shall not by error be sent into another State. This has a tendency to prevent the development of small jobbing and wholesale cities, because the small jobber perhaps can not well afford to carry in stock what in fact is the same article properly labeled for a number of different States surrounding him.

It is therefore provided in the bill that the Secretary of Agriculture shall fix the standard of food products when advisable, and that to aid him in reaching just decisions, he is authorized to call upon the committee on food standards of the Association of Official Agricultural Chemists and the committee of standards of the Association of State Dairy and Food Departments, and such other experts as he may deem necessary.

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NECESSITY FOR NATIONAL PURE-FOOD LAW

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* * * * * * *

One of the hoped-for good results of a national law on the subject of pure foods is the bringing about of a uniformity of laws and regulations on the part of the States within their own several borders. It is believed that the fixing of food standards through the aid, in part, of the State food officials in collaboration with the Agricultural Department will have the happy result of final uniform food standards and regulations in the different States.

VARIOUS BILLS INTRODUCED IN CONGRESS

Legislation regarding interstate commerce in foods has been constantly before the Congress of the United States for about eighteen years. Senate bill No. 3991, introduced June 3, 1890, by Mr. Paddock, passed the Senate about fourteen years ago. Since then the following pure-food bills have been introduced in the Senate and the House:

* * * * * * *

PURE FOODS

The purpose of the pending measure is not to compel people to consume particular kinds of foods. It is not to compel manufacturers to produce particular kinds or grades of food. One of the principal objects of the bill is to prohibit in the manufacture of foods intended for interstate commerce the addition of foreign substances poisonous or deleterious to health. The bill does not relate to any natural constituents of food products which are placed in the foods by nature itself. It is well known that in many kinds of foods in their natural state some quantity of poisonous or deleterious ingredients exists. How far these substances may be [p. 6] deleterious to health when the food articles containing them are consumed may be a subject of dispute between the scientists, but the bill reported does not in any way consider that question. If, however, poisonous or deleterious substances are added by man to the food product, then the bill declares the article to be adulterated and forbids interstate traffic.

The question whether certain substances are poisonous or deleterious to health the bill does not undertake to determine, but leaves that to the determination of the Secretary of Agriculture under the guidance of proper disinterested scientific authorities, after most careful study, examination, experiment, and thorough search.

While the provisions of the bill forbid the adulteration of food products, they also attempt to give a measure of protection to the consumer by forbidding interstate traffic in falsely labeled or branded articles. The theory of the bill is that the consumer of food products is entitled to consume whatever he may wish, but that he is also entitled, when he purchases an article purporting to be one thing, not to be cheated by having some inferior or different article passed off on him. The basis of the bill is to require at least a fair degree of honest dealing.

From a careful study of the data which have been considered by the committee through extensive hearings in this and former Congresses, it is certain that there is an immense amount of deception, fraud, and deliberate swindling practiced by the misbranding of food products. False and misleading claims are often found attached as a part of the label to food products. False statements of origin or of the country in which the substance is produced are often found. Where a particular State or locality has managed to build up a reputation for its products and thereby enhance their market value, it has become a somewhat common practice for manufacturers in other sections of the country to steal the name of the favored State or locality and thereby endeavor to steal the benefit of an enhanced price. This is unfair, both to the consumer and to the locality or State which is named. The pending measure forbids the entry into interstate commerce of such fraudulent labels and misleading descriptions.

Under the term "food" has been included not only ordinary foods, but also drinks, confectionery, and condiments. It has been shown by the researches of distinguished physiological chemists that beverages generally contain food products which, by their oxidation, furnish heat and energy, and also in many cases upbuild tissues and restore waste. Therefore, a food in liquor form may be considered from the same standpoint as any other food. Condiments are essential to modern food consumption and are, therefore, very properly included under the class of foods.

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OFFICIALS TO CARRY OUT THE LAW

The bill provides that the law shall be carried out under uniform rules and regulations to be made by the Secretaries of the three departments, to wit: Treasury, Agriculture, and Commerce and Labor. It is not designed to add a vast number of employees to the Government service. If the bill becomes a law no additional employees can be added except as may be authorized by appropriations hereafter made by Congress. Nor will there be any considerable number of employees required in any event. The officials of the National Government having charge of the enforcement of the law will cooperate with the State food, dairy, and drug officials.

The prosecutions which will be commenced by the national authorities will be mainly directed against the manufacturers of food products; or, if it be impossible to find the manufacturer, against the jobbers and wholesale dealers. If the State officials cooperate, they will call the attention of the national authorities to the existence of adulterated and misbranded articles within the State borders. These articles will be examined under the direction of the Bureau of Chemistry; and if found contrary to the provisions of the act, then prosecutions will be commenced against the manufacturer, who will be known by his guaranty. There will be no occasion for many officials in the employ of the Government and no occasion for great expense.

It is not proposed by the bill to interfere in any way with the power of the State officials over local trade, but the purpose of the bill is to give to State officials the aid of the National Government and to receive from the State officials their aid in the enforcement of the national law.

The passage of this bill is in the interest of protecting the weak from the powerful, the poor consumer from the rich manufacturer.

The laboring man or artisan, who knows his own trade, but who may not be an expert in the quality of foods or their imitations or adulterations, is entitled to the protection of the State to the extent that when he purchases an article for the consumption of his family he receives what he pays for, and further, to know that the food which he buys and eats shall give him strength and vigor instead of containing some harmful substance or poison which, in the end, breaks down his health. What is true of such a man is true of all the rest of us. The public is entitled to protect itself against those who would cheat and defraud it in those necessaries of life where one can not tell the spurious from the genuine, either by casual examination or by consumption.

We think it is the duty of the State to give to the public the measure of protection offered by the provisions of the bill which we have recommended for passage.

COMMITTEE AMENDMENT

Amend the bill by striking out all after the enacting clause and inserting in place thereof as a substitute the following:

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SEC. 2. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

SEC. 3. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this act the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article, duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

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SEC. 9. That it shall be the duty of the Secretary of Agriculture to fix standards of food products when advisable for the guidance of the officials charged with the administration of food laws and for the information of the courts, and to determine the wholesomeness or unwholesomeness of preservatives and other substances which are or may be added to foods; and to aid him in reaching just decisions in such matters he is authorized to call upon the committee on food standards of the Association of Official Agricultural Chemists, and the committee of standards of the Association of State Dairy and Food departments, and such other experts as he may deem necessary. And upon request made to the Secretary of Agriculture prior to reaching any decision as provided for in this section, by any manufacturer or other person interested, asking for the appointment of a board to determine the wholesomeness or unwholesomeness of any preservative or other substance which is or may be added to foods, and concerning the use of which the person making the request has an interest, it shall be the duty of the Secretary of Agriculture to appoint a board of disinterested experts, which board shall consist of five members, one of whom shall be an expert toxicologist, one an expert physiological chemist, one an expert bacteriologist, one an expert pathologist, and one an expert pharmacologist, which board shall meet at the city of Washington, D.C., or elsewhere, at the call of the Secretary of Agriculture, and pass upon such question after proper notice and hearing granted to the person making such request. The compensation of the members of such board shall be fixed by the Secretary of Agriculture.

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PURE FOOD

Part 2

MARCH 14, 1906.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BARTLETT, from the Committee on Interstate and Foreign Commerce, submitted the following as the

VIEWS OF THE MINORITY

[To accompany S. 88.]

The undersigned members of the Committee on Interstate and Foreign Commerce, being unable to agree with the report submitted on Senate bill 88, respectfully submit the following reasons why they can not concur in the report:

The power of government to regulate the sale of food products and drugs, prohibit adulteration of the same, prescribe the manner in which they shall be branded, and fix the size and weight of of the packages in which such food products and drugs shall be contained is admittedly an exercise of police power. We do not understand or believe, from our conception of the powers of Congress contained and specified in the Constitution of the United States, that Congress has the power or authority to enact police laws for the regulation of the manufacture, sale, or for the prevention of the adulteration of food, except so far as such laws may be made to apply to the District of Columbia, the Territories, and those localities over which Congress has, under the Constitution, exclusive jurisdiction.

While we are in hearty accord with all efforts made for the purpose of having laws enacted to prevent the sale of impure or adulterated foods, or to prevent frauds and impositions upon the people by the sale of impure or adulterated foods, we believe that the legislatures of the several States have full power and authority to enact such laws and to protect the people of the various States from fraud and imposition by the sale of impure or adulterated food and drugs. Nearly all of the States have enacted laws on the subject and are enforcing them. The power to protect the people of the various States in health, in morals, and general welfare is inherent in the States—was reserved to the States by the Constitution, was not delegated to the Congress of the United States, and remains there to be exercised by the States at the will and pleasure of the legislatures of such States.

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STANDARDS OF FOOD

The bill provides that the standards of food which may be established shall be fixed by the Secretary of Agriculture, aided by the committee on food standards of the Association of Official Agricultural Chemists and the committee of standards of the Association of State Dairy and Food Departments. This provision, contained in section 9 of the bill, will not accomplish the purpose intended, because if the Secretary of Agriculture should establish a standard for food products, and any State into which such food products may be transported should establish a different standard, as the State would have a right to do, the standard fixed by the law of the State where the food is sold or offered for sale would control.

In other words, the Congress of the United States can not, by this bill enacted into law, establish a standard for food products which will prevent the States from enforcing compliance with such standards for food products as the legislatures of the States may prescribe for the several States. Therefore the purpose of the bill —i.e., to have a uniform standard for food—will fail. As has already been stated, the Supreme Court of the United States, in the case of Crossman *v.* Lurman (192 U. S., 189), decided that the

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standard for food products established by the legislature of New York for the State of New York would prevail over the standard fixed for food products by the act of Congress, and that Congress could not, by fixing a standard for food products imported into the United States, deprive the States of their police power of regulating the sale of food products within the States.

In that case the Supreme Court say:

> It is urged that, even although there was power in the State of New York to legislate on the subject of adulteration of food, such legislation ceased to be operative as regards food products imported into the United States through the channels of foreign commerce after the passage of the act of Congress approved August 30, 1890, "providing for the inspection of means for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases." (26 Stat., 414.) The second section of that act, it is insisted, does not exclude from importation adulterated food, but simply adulterated food which is mixed with any poisonous or noxious chemical, drug, or other ingredient injurious to health, which it is urged was not the case with the coffee in question. The language of the section upon which this contention is based is as follows:
>
> "That it shall be unlawful to import into the United States any adulterated or unwholesome food or drug, or any vinous, spirituous, or malt liquors, adulterated or mixed with any poisonous or noxious chemical, drug, or other ingredient injurious to health."
>
> We think it unnecessary to determine whether the statute lends even color to the proposition, since we think it is clear that its effect, whatever be its import, was not to deprive the State of its police powers to legislate for the benefit of its people in the prevention of deception and fraud, and thus to control sales made within the State of articles so adulterated as to come within the valid prohibition of the State's statute.

If it be the law, as was stated in this last-mentioned case, that, notwithstanding the fact that Congress had fixed a standard for food imported into the United States, and notwithstanding that the officials of the United States authorized to inspect the food thus imported had approved of such imported food as having complied with the law, the States have the right under their police power to fix another and different standard, and that food when offered for sale or delivered in the States should come up to the standard fixed by the State, then this bill which endeavors to fix a national food standard for all food products in the United States when shipped from one State to another must fail in its purpose, because whenever any of the States shall fix or prescribe a different standard the manufacturers of the food products must comply with the laws of the State where such food is manufactured or offered for sale.

Congress has already by act approved June 3, 1902, authorized the Secretary of Agriculture to establish standards of food and food products, and to determine what are regarded as adulterations therein for the guidance of the officials of the various States and the courts of justice. And the Secretary in pursuance of that act on November 21, 1903, issued a circular proclaiming standards for purity of food products, together with their definitions, as the official standards of these food products for the United States. That proclamation is as follows:

ORIGINAL PROCLAMATION OF STANDARDS AND LETTER OF TRANSMITTAL.

[Circular No. 10, Secretary's Office.]

Whereas, The Congress of the United States by an act approved June 3, 1902, authorized the Secretary of Agriculture to establish standards of purity for food products; and

Whereas he was empowered by this act to consult with the Committee on Food Standards of the Association of Official Agricultural Chemists and other experts in determining the standards; and

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Whereas, he has in accordance with the provisions of the act availed himself of the counsel and advice of these experts and of the trade interests touching the products for which standards have been determined and has reached certain conclusions based on the general principles of examination and conduct hereinafter mentioned;

Therefore I, James Wilson, Secretary of Agriculture, do hereby proclaim and establish the following standards for purity of food products together with their precedent definitions as the official standards of these food products for the United States of America.

JAMES WILSON.

WASHINGTON, D.C., *November 21, 1903.*

The various State legislatures have in many instances passed laws to conform to these standards, and doubtless many more will do so. In our opinion, this will be all the law necessary or proper for Congress to pass on the subject.

If anything at all is needed in the way of legislation to enable the States to effectually enforce their laws upon the subject of food, food products and drugs, and to prevent the sale of impure foods, or the fraudulent branding of food products or drugs, then all that is needed is for Congress to enact a law which would subject such food products or drugs to the police laws of the various States whenever they are transported into the States for sale or use in the same way that the act of August 8, 1890, made spirituous liquors and beer subject to the laws of the States when transported therein for use or consumption, and, to that end, we suggest that House bill No. 16248 would meet the present demands for pure-food legislation.

That bill is as follows:

[H.R. 6248, Fifty-ninth Congress, first session.]

A BILL to limit the effect of the regulations of commerce between the several States and with foreign commerce in the case of foods and drugs.

Be it enacted by the Senate and House of Representatives of the United

States of America in Congress assembled, That from and after the passage of this act all articles of food or drugs transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival in such State or Territory, be subject to the operation of and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such food or drugs had been produced or manufactured in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages.

SEC. 2. That the term "food" as used herein shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound. That the term "drugs" shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals.

We therefore offer this bill as a substitute for both the Senate bill and the House substitute, believing that if Congress shall enact the same it will do all that Congress is authorized to do under the Constitution and will fully protect the people of the United States, or at least will leave to the people of the various States, through their legislatures, the duty of protecting the people of the States from frauds and impositions in the matter of food products. This is where the Constitution of the United States places the power of protecting the people of the States in their health, safety, and morals, and will not destroy the powers of the States, and will not convert Congress into a legislature for the enactment of purely police laws for the various States of the Union.

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1.2a (3) COMMITTEE OF CONFERENCE

H.R. REP. No. 5056, 59th Cong., 1st Sess. (1906)

PURE FOOD BILL

JUNE 27, 1906.—Ordered to be printed.

Mr. HEPBURN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 88.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 88) entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment.

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1.2a (4) SECOND COMMITTEE OF CONFERENCE

H.R. REP. No. 5096, 59th Cong., 1st Sess. (1906)

PURE FOOD BILL

JUNE 27, 1906.—Ordered to be printed.

Mr. HEPBURN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 88.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 88) entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment.

Strike out all of said amendment and insert in lieu thereof the following:

That it shall be unlawful for any person to manufacture, sell, or offer for sale within any Territory or the District of Columbia, or deliver for shipment, or to cause to be delivered, shipped, or transported from within any State, Territory, or District of Columbia to any State, Territory, or District of Columbia, or foreign country, any article of food, drugs, medicines, or liquors which is adulterated or misbranded, or which contains any poisonous or deleterious substance within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each *subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.*

Sec. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby [p. 1] *prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: Provided, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.*

Sec. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other *than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.*

Sec. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under [p. 2] *the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.*

Sec. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

Sec. 6. That the term "drug," as used in this Act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall in-

clude all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

Sec. 7. That for the purposes of this Act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: Provided, That no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contains terra alba barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: Provided, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed [p. 3] *as applying only when said products are ready for consumption.*

Sixth. If it consists in whole or in part of a filthy, decomposed, or *putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.*

Sec. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded:

In case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: Provided, That an article *of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:*

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case

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may be, is plainly stated on the package in which it is offered for sale: Provided, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: And provided further, That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding.

Sec. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this Act.

Sec. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any dis-

trict court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: Provided, however, That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

Sec. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this act, or is otherwise dangerous [p. 5] *to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: Provided, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty* *thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: And provided further, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.*

Sec. 12. That the term "Territory" as used in this Act shall include the insular possessions of the United States. The word "person" as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

Sec. 13. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and seven.

That the House recede from its amendment to the title and agree to the title as passed in the Senate.

W. P. HEPBURN,
JAMES R. MANN,
W. H. RYAN,
Managers on the part of the House.

W. B. HEYBURN,
P. J. MCCUMBER,
A. C. LATIMER,
Managers on the part of the Senate.

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STATEMENT OF MANAGERS ON PART OF THE HOUSE

The conferees on the part of the House on the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes, submit the following statement:

The House struck out all of the Senate bill after the enacting clause and inserted in lieu thereof, as one amendment, an act complete in itself. There was, therefore, but one amendment as a whole to be considered by the conferees. The conferees accepted the House amendment as a basis and modified the same as herein explained by striking out all of the House amendment and inserting in lieu thereof the same matter as amended in conference.

The following statement is in explanation of the bill as reported by the conferees:

Section 1 is substantially section 1 of the Senate bill and prohibits manufacture of adulterated and misbranded foods and drugs within the Territories or District of Columbia.

Section 2 is substantially section 2 of the Senate bill and section 1 of the House amendment.

Section 3 is substantially section 3 of the Senate bill and section 2 of the House amendment.

Section 4 is substantially section 4 of the Senate bill and section 3 of the House amendment.

Section 5 is substantially section 5 of the Senate bill and section 4 of the House amendment.

Section 6 is substantially sections 6, 7, and 8 of the Senate bill combined and section 5 of the House amendment.

Section 7 is the one defining adulterations and contains the provisions of the House amendment and the Senate bill on the same matter in somewhat different arrangement. This section deals with adulterations. The conferees struck out the provision in the House amendment giving the definitions of adulterations of drugs and adopted the definitions in section 9 of the Senate bill. The remainder of the section is the same as the remainder of section 6 of the House amendment, which is substantially the same as provisions in the Senate bill in section 9, except that in the fifth subdivision in section 6 of the House amendment there is inserted, after the word "otherwise," line 14, page 6, the following: "and directions for the removal of said preservative shall be printed on the covering or the package," so that said subdivision will read as follows:

"Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: [p. 7] shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption."

Section 8 is substantially the same as section 7 of the House amendment, with the following amendments:

Strike out of the first paragraph of the section numbered "Second" the following words at the end of the paragraph, to wit:

"*Provided, however,* That it may be proven as a complete defense to any accusation or prosecution for failure to state the quantity or proportion of alcohol as above required that the quantity or proportion of alcohol contained in any package does not exceed the quantity or proportion prescribed by the United States Pharmacopoeia or the National Formulary as a solvent or preservative of the active necessary constituents of the medicine or preparation in such package."

And by amending the third paragraph, marked "Second," by inserting after the word "blends" the words "and the word 'compound, imitation, or blend,' as the case may be, is plainly stated on the package in which it is offered for sale," and inserting after the word "ingredient" the words "used for the purpose of coloring and flavoring only," so that said paragraph will read as follows:

"Second. In the case of articles labeled, branded, or tagged, so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: *Provided,* That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further,* That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding."

This section includes the provision requiring the labeling of habit-forming drugs by declaring any drug to be misbranded "if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein."

And the same requirement is made as to foods containing any of such narcotics.

Section 9 is the same as section 10 of the Senate bill and section 8 of the House amendment, and relates to the giving of a guaranty by the seller to the purchaser.

Section 10 is the same as section 13 of the Senate bill and section 13 of the House amendment.

Section 11 is the same as section 14 of the House amendment, for which there is no corresponding section in the Senate bill.

Section 12 is section 15 of the House amendment.

Section 13 declares that the act shall be in force and effect from and after the 1st day of January, 1907.

Omitted from the bill, as reported by the conferees, is section 9 of the House amendment relating to the fixing of standards of food. Also omitted is section 10 of the House amendment. Section 10 of [p. 8] the House amendment required any person to sell to a Government agent an article of food or drug which might be used against him in prosecution. Omitted is also section 11 of the House amendment providing for penalty for violation of the preceding section omitted, and providing for additional costs and expenses to be put against a defendant as part of the penalty. Omitted is also section 12 of the House amendment, providing that the articles complying with the provisions of the act shall not be interfered with by the several States so long as they remain in original unbroken packages.

W. P. HEPBURN,
JAMES R. MANN,
W. H. RYAN,
Managers on part of the House.

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1.2a (5) CONGRESSIONAL RECORD, VOL. 40 (1906)

1.2a (5) (a) Jan. 10, 16, 17, 18, 23, Feb. 2, 19, 20, 21: Debated and passed Senate, pp. 894–898, 1129–1135, 1216–1221, 1414–1417, 2643–2644, 2654–2658, 2662–2666, 2719–2722, 2728–2729, 2747–2748, 2755–2758, 2761–2763, 2766–2767, 2773

PURE-FOOD BILL.

Mr. HEYBURN. I now renew my motion that the Senate proceed to the consideration of the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. HEYBURN. Mr. President, I submit that this bill is one of very great interest to all the people of the country in their homes and home life. I think it is only a question in this body as to whether this bill accomplishes what this body desires to accomplish. It is merely a question as to whether its provisions are fair to all of the people, those who manufacture, those who sell, and those who use the ordinary commodities of life. Committees of this body have been endeavoring for many years to reach a conclusion and to formulate a bill that would accomplish this purpose, and we sincerely hope that we have reached that point.

It has seemed to the committee in presenting this bill that the first consideration was to prevent the manufacture of articles that were deleterious to health and to prevent the combination of articles that would deceive and defraud the public. That was the primary object of the committee in preparing this bill.

Mr. President, I shall occupy but a few moments of the Senate's time in stating the general features of this bill. It has not been read, and perhaps it will not be necessary to take the time needed to read it, inasmuch as it will be considered practically by sections.

The first section of the bill provides that it shall be unlawful to manufacture forbidden or prescribed articles. It prescribes a fine and imprisonment against the manufacturer of such articles; it provides that for the first offense the party shall be fined not to exceed $500, or shall be sentenced to one year's imprisonment or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense on conviction he shall be fined not less than $1,000 or sentenced to one year's imprisonment or both, at the discretion of the court. That applies to the manufacturer who makes and sells such articles.

SECTION 2 of the bill provides against the introduction of forbidden articles from one State or Territory or district or insular possession into another jurisdiction, and prescribes practically the same fine for the introduction of the articles as it does for the manufacture of them.

Then there is a new feature to this bill that has not been heretofore embodied in any bill that has been introduced, so far as I know, in regard to the manner of the execution of the law. Section 2, on page 3, provides:

> **That in the case of any violation of the provisions of the foregoing two sections by any corporation, the fines and penalties imposed therefor may be enforced against the officers of such corporation personally responsible for such violation, and any violation of any of the provisions of this act by any corporation shall be deemed to be the act of the officer of such corporation directly responsible therefor, and such officer may be punished for such violation as though such violation was the personal act of such officer.**

That is a new feature in bills of this kind. It was intended to obviate the possibility of escape by the officers of a corporation under a plea, which has been more than once made, that they did not know that this was being done on the credit of or on the responsibility of the corporation.

There is another innovation, or rather a new feature, in the beginning of section 3, which provides a different method for the collection of specimens from which to make a determination as to the character of the article. Heretofore it was provided that this should be done under rules and regulations made by the Secretary of Agriculture; but we find, as a practical matter, that the Secretary of Agriculture cannot make and enforce rules in the other coordinate bureaus of the Government. So it is provided here—

> **That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and**
>
> [p. 894]
>
> **regulations for the collection and examination of specimens of foods, drugs, medicines, and liquors manufactured or offered for sale in the District of Columbia, or in any other district, Territory, or insular possession of the United States, or which shall be offered for sale, etc.**

It provides that those three Departments—the Treasury, Agriculture, and Commerce and Labor—shall make rules jointly covering the manner of collecting specimens for determination. That became necessary from a consideration of the application of those several Departments to the subject-matter of this bill. We find that the Treasury Department must make its investigations at the custom-houses and other branches particularly under its control; and it would be neither right nor proper that any Department of the Government should undertake to make rules to be executed by another Department of the Government. So that the Secretary of the Treasury, cooperating with the Secretary of Agriculture and the Secretary of Commerce and Labor, will make rules sufficient for the execution of the purposes of this act so far as the collection of specimens is concerned. That was the object of requiring the joint action of these three Departments of the Government. It did not appear that any other Departments of the Government than those three would be necessarily involved in the collection of these specimens.

Then it is provided that, after such specimens are collected, the determination shall be made by the Bureau of Chemistry of the Department of Agriculture. While we have minor bureaus of chemistry under the Government, yet the combination of accommodations for that purpose is in the Department of Agriculture. The peculiar functions of that Department require a more thorough equipment than that of any other Department of the Government. So that after these specimens are collected, they are all submitted to the determination of the Bureau of Chemistry in the Department of Agriculture.

Another new feature in this bill is that we have separated liquors from foods. Heretofore the proposed measures have denominated all liquors, wines, and so forth as food. It did not appear to the committee reporting this bill that they should be so classified. Liquor is not a food necessary for the maintenance or sustenance of the human frame. If anything, it is a luxury. But, however much difference of opinion there may be upon that subject, it was eminently unfair to that great portion of the people who do not believe that liquor is a necessity, to classify liquors with foods in determining a great question of this kind. So we have separated them, and, as an independent part of this bill, provided for a method appropriate to the determination of the standard of purity and helpfulness of liquors.

Those are the new features of this proposed legislation. The spirit of the bill is crystalized—if that is an appropriate term—in the responsibility that is primarily placed upon the manufacturer of these forbidden articles. The first intendment of the bill is to prevent the making of them. Of course, we cannot presume that the bill if enacted would be entirely successful in accomplishing that purpose. So we have provided that, if they are made and put upon the market, they may be detected and be driven from the market or excluded from sale.

As to the necessity for this legislation, I think it would be a waste of time to do more than suggest it. Nearly every State in the Union, Mr. President, has a pure-food law. The States have undertaken to legislate upon this subject, with, I believe, but one or two exceptions. Some of the laws upon the subject are very meager; some of them are very local; some of them are adapted to the peculiar local interests of the people of the particular State, but, as a rule, the States have enacted intelligent and appropriate legislation upon this question. Their difficulty, which has been made plain to the committee, is that they can enforce the law only to the extent of the impure and adulterated products that are sent in unbroken packages within their borders from other States. There are a number of fraudulent articles that are under the ban of this legislation, not a pound or ounce of which is offered for sale in the State in which they are manufactured, because they are provided against by the legislation of that State; but they are manufactured in one State and sent to another in unbroken packages under the rule of law that is now established, perhaps forever. So that the State into which they are sent is helpless against the flood of these impure articles sent in unbroken packages under the protection of that rule of law and then offered for sale upon the retail market.

It is impossible for a State effectively to enforce a pure-food law without the cooperation of the General Government. It is obvious that it is only the General Government that can protect us from the influx of deleterious and poisonous articles from foreign countries. That must be done at the port of entry. There we stop such importations. There has been a law for this purpose on the statute book since 1848. That law is enforced, I believe, fairly and, perhaps, as efficiently as it can be under existing statutes and rules, but the proposed legislation fortifies the law of 1848 in providing a better method and more efficient cooperation between the branches of the Government in carrying out the spirit and intent of that law.

Then, again, the distribution of ports of entry in the United States is now such that a port of entry may be far inland, and to these ports come goods from foreign ports manufactured in foreign countries that are in violation not only of every principle of common honesty and fairness and against the safety and protection of the people, but in violation of the law of our land. These importations go far inland to ports of entry in unbroken packages; there the lid is taken off and these deleterious articles are abroad in the land.

To what extent does this affect the efficiency and the ability to execute the law of a State having good laws on this subject? There are ports of entry in the West in States that prohibit the manufacture or sale or distribution of these impure articles and do so efficiently, except as against outside interference. There is the point of necessity for the cooperation of the General Government with the States in the enforcement of this class of legislation. It is merely a question whether or not Congress will extend a helping hand for the enforcement of the laws of the States in the interest of the people so far as this class of imposition is concerned.

I will not at this time undertake to enumerate the frauds perpetrated upon the people further than to state that, according to a statement which I have before me, received this morning, which is from an official source, in some of the great neighboring States more than 60 per cent of all the drugs that are offered on the market are fraudulent, and not only do they not possess the qualities for which the drug is distinguished, or should be, but they are actually adulterated to such an extent that they are dangerous to be used.

Perhaps during the consideration of this bill the details in regard to this matter may become necessary to be discussed; but at this time, assuming that it is obvious, that it is conceded, if the States of the Union have undertaken to protect their people against this kind of imposition, that Congress cannot do less than to meet them halfway and to protect the States against the importation within their borders of foreign articles against which they deem it wise to protect their people, I do not consider it necessary to enter into that discussion now.

The bill has been on the Calendar for some time, and there have been no amendments proposed to it other than one or two immaterial or small committee amendments. It is doubtless true that some Senators will have amendments to propose, but I think that with this opening statement I will submit for this time the bill to the consideration of the Senate.

Mr. GALLINGER. Mr. President, before the Senator takes his seat—I am on the committee that reported the bill, but, unfortunately, was not able to attend the meetings of the committee—I will ask the Senator if in any amendments that have been made to the bill the provision that was so strongly opposed, as I remember, by the late Senator from Connecticut, Mr. Platt, which, it was said, imposed hardships upon retailers of food and drugs, making them amenable to the law for selling what, in the very nature of things, they could not know were adulterated products—I will ask the Senator if any change has been made in the bill that places upon the manufacturer the onus and penalizes him rather than the innocent retailer, who may not really have been at fault? I have not had time to examine the bill, Mr. President, I will say, and that is the reason I make the inquiry.

Mr. HEYBURN. I will say to the Senator that I think we have amply provided against that. The bill provides that where a retailer or any person other than the manufacturer can produce a certificate from the manufacturer that the article is not adulterated it would be evidence of his having purchased in good faith, and that he shall not be prosecuted, provided that he discloses the source from which he received the goods. Then the bill provides that the prosecution shall be against the party primarily responsible.

Mr. GALLINGER. Which is the manufacturer?

Mr. HEYBURN. Which is the manufacturer. The provision was introduced to cover that point, and, I think, does adequately cover it.

Mr. SPOONER. Mr. President—

Mr. HEYBURN. If the Senator will pardon me a moment—it also provides that the contents shall be disclosed upon the package.

Mr. SPOONER. Mr. President—

The PRESIDING OFFICER (Mr. CLAY in the chair). Does the Senator from Idaho yield to the Senator from Wisconsin?

Mr. HEYBURN. With pleasure.

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Mr. SPOONER. I desire simply to ask a question. What different provision is made in this bill from the provision contained in the bill of last year as to imported articles?

Mr. HEYBURN. The provision is redrawn. The Senator refers to medicines and drugs?

Mr. SPOONER. Yes.

Mr. HEYBURN. The bill contains all that was contained in the bill of last session with some additional provisions or restrictions. But I would say to the Senator—

Mr. SPOONER. If the bill contains all—

Mr. HEYBURN. It contains the spirit of that bill.

Mr. SPOONER. If the bill contains all that was in the bill of last session, I think there is objection to it.

Mr. HEYBURN. Well, it may be objectionable to the Senator—

Mr. SPOONER. I want to be fair. I wish the Senator would indicate briefly, if he can, first, whether the structure of this bill and the theory upon which it is drawn are the same as the bill of last year, and how far it differs from that bill in four or five particulars in which it was criticized by the then Senator from Connecticut, Mr. Platt, and found objectionable by some of the rest of us. The Senator will remember the things which troubled us.

Mr. HEYBURN. I should be glad if the Senator would direct my attention to the particular part of the bill to which he refers.

Mr. SPOONER. It would oblige me to direct the Senator's attention to pretty much the whole bill. I thought he might state briefly the difference between this bill and the bill of last year.

Mr. HEYBURN. I should be very glad to enter into a comparative analysis of the bills, but I would suggest to the Senator that unless there is some particular point in his mind with reference to the present bill it would be rather a fruitless thing.

Mr. SPOONER. My recollection, for instance, is that the old bill, so far as it related to imported articles, made it dangerous for a merchant residing in the interior who had imported or who had purchased goods from an importer to rely upon the fidelity and utility of the investigation made under the Agricultural Department and by its agencies into this very matter of purity before the admission of the articles into the commerce of this country. That was one point.

Mr. HEYBURN. That would go to the penal clause of the bill.

Mr. SPOONER. The whole bill went to penal clauses. The bill was one of penalties, as I presume this bill is, and as every bill upon the subject must be. The objection there was that it imposed a penalty which under certain circumstances was an unjust penalty. Suppose, under this bill, I import a box of drugs from a foreign country, which I understand is examined under existing law at the point of entry by the agents of the Agricultural Department—

Mr. HEYBURN. Of the Treasury Department.

Mr. SPOONER. Of the Treasury Department, with reference to its purity. Would I, under this bill, have any protection against the penalty there, having based my subsequent action upon a belief that the agents of the Government had honestly discharged their duties, and that the fact that the article had been permitted to leave the port of entry or the custody of the Government officials, so as to come to me to be put into the commerce of the country, gave me good warrant, without liability of punishment, to put it on the market?

Mr. HEYBURN. I will answer the Senator that in order to cover just such cases this bill differs from the bill of last session in that in line 22, page 2, it uses the word "knowingly" as applied to just such cases.

Mr. SPOONER. That is one of the questions I wanted the Senator to answer and which he had not answered, but now has. That is a great improvement.

Mr. HEYBURN. Yes. The committee has been somewhat criticized for inserting the word "knowingly," but it was done to meet the objections made by the Senator on the former consideration of this bill.

Mr. SPOONER. But there is a distinction as to the use of the word "knowingly" in that connection and the use of the word "knowingly" in so far as it relates to the use of a product manufactured in this country.

Mr. HEYBURN. We only use the word "knowingly" as applied to receiving within the Territories, States, etc.

Mr. SPOONER. But there is a distinction between goods received from abroad, which have already been examined, or at least for which the Government has paid to have an examination made, and goods going from one State into another State, which have not been subjected to governmental examination. There a different rule might very well apply.

Mr. HEYBURN. With the permission of the Senator I will read the provision.

Mr. LODGE. I suggest—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Massachusetts?

Mr. HEYBURN. Certainly.

Mr. LODGE. If it would not interrupt the Senator, I suggest that the whole bill had better be read after the Senator has called attention to the clause he has in mind.

Mr. HEYBURN. It has not been read. I did not ask that it be read.

Mr. LODGE. It will have to be read some time.

Mr. SPOONER. The Senator will understand me; I am not asking these questions out of any hostility to the bill.

Mr. HEYBURN. I thoroughly understand that, and I am glad to have the attention of the Senate directed to these provisions in order that they may be made perfectly plain.

I read from the provision beginning in line 18 on page 2:

> And any person, association of persons, or corporation who shall ship or deliver for shipment from any State, Territory, district, or insular possession to any other State, Territory, district, or insular possession, or shall export—

There is no "knowingly" there. A man is bound to know what he himself does. The word "knowingly" is not used. The responsibility is upon every man to know that he is not going to injure his neighbor. But take the next sentence:

> or offer to export the same to a foreign country, or who shall knowingly receive in any State, Territory, district, or insular possession of the United States from any other State, Territory, district, or insular possession of the United States, or from any foreign country, or who, having received—

"Knowingly." "Knowingly" is not in there, but the "knowingly" I have used relates to the whole sentence—

> shall deliver in original, unbroken packages, or shall offer to deliver to any other person, persons, or corporation any such article, shall be guilty of a misdemeanor and upon conviction for such offense shall be fined, etc.

That was intended to meet the objection which was urged against innocent parties being made the victims of this legislation, and the distinction was drawn clearly between the person whom the law presumes to know and the person who might be imposed upon.

Mr. GALLINGER. I suggest in line 1, page 3, the insertion of the word "knowingly;" so as to read, "or who having knowingly received." I think that is very important.

Mr. HEYBURN. If the word is not carried clear through the sentence it might be well to repeat it, but I think on technical examination it will be found that the word is carried throughout the sentence.

Mr. LODGE. It would do no harm to put it in.

Mr. HEYBURN. No; and I shall not object to its insertion, because it is intended to be there.

Mr. SPOONER. Of course in a statute which carries penalties against the citizen, and plenty of them, we ought not to be so economical in the use of words as to engender the slightest possible doubt.

Mr. HEYBURN. Yes; I will move to amend it by inserting in line 1, on page 3, after the word "having," the word "knowingly."

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Idaho.

The amendment was agreed to.

Mr. HEYBURN. In reference to the importation of goods, I will say that our present law, so far as drugs and medicines and that class of articles are concerned, is a very good law, and it is enforced through the Treasury Department. The Treasury Department cooperates with the Bureau of Chemistry in the performance of its work, although it is equipped to a certain extent for the performance of independent work. I have not deemed it necessary, in drawing this bill, to go beyond the necessities outside of the provisions of existing law.

Mr. LODGE. I desire to offer three amendments to the bill, all to be printed on one sheet, and I ask to have them printed in the RECORD also. Then let them go over, so that they may be considered when the bill shall be voted on.

The PRESIDING OFFICER. The amendments will be printed and lie on the table.

The amendments submitted by Mr. LODGE are as follows:

> Insert on page 8, end of line 9: "*Provided further*, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption."
>
> On page 9, line 2, and after the word "character," insert "and the amount of alcohol, if any, contained in them."

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On page 10, end of line 6, after the word "imitation," insert "and to show the amount, if any, of alcohol, contained in them."

Mr. SPOONER. I suggest that the bill be incorporated in the RECORD.

Mr. HEYBURN. Yes.

Mr. LODGE. It ought to be read.

Mr. SPOONER. It is not up for action. Let the bill be printed in the RECORD as amended.

The PRESIDING OFFICER. The Senator from Wisconsin asks that the bill be printed in tomorrow's RECORD. Is there objection? The Chair hears none, and the bill will be printed in the RECORD.

The bill is as follows:

Be it enacted, etc., That it shall be unlawful for any person, association of persons, or corporation within any Territory, District, or insular possession of the United States, to manufacture, sell, offer for sale, or deliver for shipment, or to cause to be delivered, shipped, or transported from within any State, Territory, District, or insular possession to any State, Territory, District, insular possession, or foreign country any article of food, drugs, medicines, or liquors which is adulterated or misbranded, or which contains any poisonous or deleterious substance within the meaning of this act; and any person, association of persons, or corporations who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed $500, or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than $1,000, or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. That the introduction into any State, Territory, District, or insular possession, from any other State, Territory, District, or insular possession, or from any foreign country, or the shipment to any foreign country or any article of food or drugs which is adulterated or misbranded, deleterious or poisonous, within the meaning of this act, is hereby prohibited; and any person, association of persons, or corporation who shall ship or deliver for shipment from any State, Territory, District, or insular possession to any other State, Territory, District, or insular possession or shall export or offer to export the same to a foreign country, or who shall knowingly receive in any State, Territory, District, or insular possession of the United States from any other State, Territory, or District, or insular possession of the United States, or from any foreign country, or who, having knowingly received, shall deliver in original unbroken packages, or shall offer to deliver to any other person, persons, or corporation any such article, shall be guilty of a misdemeanor and upon conviction for such offense shall be fined not exceeding $500 for the first offense, and upon conviction of each subsequent offense shall be fined not exceeding $500 or be imprisoned not exceeding one year, or both, in the discretion of the court.

That in the case of any violation of the provisions of the foregoing two sections by any corporation, the fines and penalties imposed therefor may be enforced against the officers of such corporation personally responsible for such violation, and any violation of any of the provisions of this act by any corporation shall be deemed to be the act of the officer of such corporation directly responsible therefor, and such officer may be punished for such violation as though such violation was the personal act of such officer.

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for the collection and examination of specimens of foods, drugs, medicines, and liquors manufactured or offered for sale in the District of Columbia, or in any other district, Territory, or insular possession of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health officer of any State, Territory, District, or insular possession, and at any domestic or foreign port through which such product is offered for interstate commerce or for export or import between the United States and any foreign port or country.

SEC. 4. That the examinations of specimens of foods, drugs, medicines, and liquors shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such article is adulterated or misbranded, or contains any poisonous or other substance deleterious to the health of human beings or domestic animals; and if it shall appear from any such examination that such specimens are adulterated or misbranded or contain any added poisonous or deleterious substance or ingredient injurious to human health when used in the prescribed or usual manner of use of such article, the Secretary of Agriculture shall cause notice thereof to be given to the parties from whom such samples were obtained, and public notice of the facts shall be given by publication in such manner as the rules and regulations may prescribe to all other persons, association of persons, or corporations in whose possession like articles may be found or known to be that such article is within the provision of this act; and shall give such party as may be charged with violation of this act an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if after such hearing it is found that any of the provisions of this act have been violated by such parties, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article, duly authenticated by the analyst or officer making such examination, under the oath of such officer.

SEC. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any health officer or agent of any State, Territory, District, or insular possession shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the recovery of the fines and the enforcement of the penalties as in such case herein provided.

DEFINITIONS

SEC. 6. That the term "drug" as used in this act shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal and external use; also any substance intended to be used for the cure, mitigation, or prevention of disease.

SEC. 7. That the term "food" as used herein shall include all articles used for food, drink (other than malt, spirituous, or vinous liquors), confectionery, or condiment by man or domestic animals, whether simple, mixed or compound.

SEC. 8. That the term "liquor" as used herein shall include all malt, vinous, alcoholic, and spirituous liquors and combinations of them used or intended to be used as beverages.

ADULTERATIONS AND MISBRANDING

SEC. 9. That for the purpose of this act any article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: *Provided*, That no drug not defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof as originally packed.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

That such drug shall be deemed to be misbranded:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the package containing it, or its label, shall bear any statement regarding the ingredients or the substances contained therein, which statement shall be false or misleading in any particular, or if the same is falsely branded as to the country, State, or Territory, or place therein, in which it is manufactured or produced, or if the contents of the original package shall have been removed, in whole or in part, and other contents shall have been placed in such package.

In the case of confectionery an article shall be deemed to be adulterated:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous colors or flavors, or other ingredients deleterious or detrimental to health.

In the case of food an article shall be deemed to be adulterated:

First. If any substance or substances has or have been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance or substances has or have been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it contain any added poisonous or other ingredient which may render such article injurious to human health: *Provided*, That goods intended for export shall not be deemed misbranded or adulterated when prepared and packed in accordance with specifications of the foreign purchaser, provided no substance is used that is in conflict with the laws of the country to which the goods are to be shipped, when such country having laws upon the subject does not prohibit such process of preparation.

Fifth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter.

An article of food shall be deemed to be misbranded:

First. It it is to be offered for sale under the name of another article: *Provided*, That the term "distinctive name" shall not be construed as applying to any article sold or offered for sale under a name that has come into general use to indicate the class or kind of the article if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. If it be mixed, colored, powdered, or stained in a manner whereby damage or inferiority is concealed, so that such product when sold or offered for sale shall deceive or tend to deceive the purchaser or user thereof.

Third. If it be labeled or branded so as to deceive or mislead the purchaser or user, or purport to be a foreign product when not so, or is an imitation, either in package or label, of another substance of a previously established name, or which has been trade-marked or patented.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular, or if the same is falsely branded as to the State, Territory, or place in which it is manufactured or produced.

Fifth. An article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the case of mixtures or compounds which may be now, or from time to time hereafter, known as articles of food sold under their own distinctive names and not included in definition first of misbranded articles of food in this section, or in the case of articles labeled, branded, or tagged so as to plainly indicate that they are mixtures, compounds, combinations, imitations, or blends: *Provided*, That the same shall be labeled, branded, or tagged so as to show that they are of such character: *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary goods which contain no unwholesome added ingredients to disclose their formulas of production except in so far as the provisions of this act may require to secure freedom from adulteration or imitation.

In the case of liquors, an article shall be deemed adulterated if it contain any added ingredient of a poisonous or deleterious character.

Such liquors shall be deemed misbranded:

First. If it is blended or rectified, or consists of an admixture of different grades of the same liquor, or contains, or is mixed with, other substances, and such fact is not plainly stated on the package in which such liquor is offered for sale, or if the label or any written or printed statement accompanying the package in which such liquor is kept or sold contains any false statement as to the character of the contents of such package, or represents such liquor to be the product of any other country than that in which it was actually produced.

SEC. 10. That no dealer shall be convicted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating such article. Said guaranty, [p. 897] to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such cases said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

SEC. 11. That every person, association of persons, or corporation who manufactures or produces and delivers for interstate or foreign shipment or transportation, or who receives from any State, Territory, district, or insular possession or foreign country other than the State, Territory, district, or insular possession in which it is produced, and any person, association of persons, or corporation who sells or exposes for sale in any Territory, district, or insular possession any article of food, drug, or liquor, shall furnish, within business hours and upon tender and full payment of the selling price, a sample of such drug, article of food, or liquor, to any person duly authorized by the Secretary of Commerce and Labor to receive the same, and in any Territory, district, or insular possession, to any officer or agent of such Territory, district, or insular possession, respectively, charged with the inspection of food or drugs in such jurisdiction who shall apply to such manufacturer, producer, or person or association of persons, or corporation selling or exposing for sale as aforesaid such drug, article of food, or liquor for such sample in sufficient quantity for an analysis of any such article or articles in his or their or its possession.

SEC. 12. That any manufacturer, producer, or dealer who refuses to comply upon demand with the requirements of section 11 of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding $100 or imprisonment not exceeding one hundred days, or both. And any person, association of persons, or corporation, found guilty of manufacturing or offering for sale, or selling, any adulterated, impure, or misbranded article of food, drug, or liquor in violation of the provisions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles which said person may have been found guilty of manufacturing, selling, or offering for sale.

SEC. 13. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, District, or insular possession, to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the laws of that jurisdiction: *Provided, however*, That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

SEC. 14. That this act shall not be construed to interfere with commerce wholly internal in any State nor with the exercise of their police powers by the several States.

SEC. 15. That the provisions of this act shall not apply to common carriers as such, or to their servants, agents, or employees, acting for said common carriers.

SEC. 16. That this act shall take effect and be in force from and after the 1st day of July, 1906.

Mr. GALLINGER. Mr. President, I feel that as a member of the Committee on Manufactures, from which this bill was reported, I owe myself the duty of very critically examining it before it is finally passed upon.

I only rise now for the purpose of saying that I am exceedingly gratified to know that the committee has inserted the word "knowingly" in section 2. That was one of the points which led me during the last session of Congress to feel that I could not vote for the bill in the form in which it then appeared. I think the chairman of the committee and the committee have done a great public service in removing from the minds of some of us, at least, an objection that seemed insurmountable. I presume the bill has in other respects been so carefully guarded that those of us who want to support a bill of this character, who believe in pure food and pure drugs and have no sympathy whatever with those who are adulterating them, will find that they can give it their support.

At any rate, Mr. President, I feel more sanguine than I have ever felt before that we will be able to pass a bill covering this very important subject, which will be of great and lasting benefit to the people of this country. That is all I care to say at the present time.

The PRESIDING OFFICER. The Chair desires to know from the Senator from Idaho whether any motion is pending before the Senate in regard to this bill?

Mr. HEYBURN. There are only certain amendments which have been submitted by the Senator from Massachusetts, and while I am not thoroughly familiar with all of them, so far as I am advised they are amendments which the committee would be inclined to accept, and it may be we can progress with the bill further than we anticipated.

Mr. LODGE. I think my amendments had better be printed and go over until tomorrow, so that the Senator can have an opportunity to look at them. There are two others besides the one I spoke of to the Senator. I do not want to delay the bill in the least. I shall be ready to vote upon it.

Mr. SPOONER. I hope the Senator from Idaho will not attempt to press the consideration of the bill.

Mr. HEYBURN. That is not my intention at all.

Mr. SPOONER. It is a bill which requires, of course, careful examination, and no one not connected with its preparation has had any opportunity to examine it carefully.

Mr. HEYBURN. I will say to the Senator that I rose to state that I have no further remarks to make today, and that I thought, inasmuch as it was proposed that the bill should be printed in the RECORD and the amendments be printed, that it go over until tomorrow.

Mr. LODGE. Let it go over until tomorrow.

The PRESIDING OFFICER. Without objection, the bill will go over until tomorrow.

[p. 898]

PURE-FOOD BILL.

The Senate, as in Committee of the Whole, resumed consideration of the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Mr. HEYBURN. Mr. President, the matter that has been taken up by the Senate is one of more than passing importance, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Idaho suggests the absence of a quorum. The Secretary will call the roll.

The VICE-PRESIDENT. The amendments will be stated in their order.

The SECRETARY. The Committee on Manufactures report, in section 2, page 3, line 13, after the word "personally," to insert "responsible for such violation;" so as to read:

That in the case of any violation of the provisions of the foregoing two sections by any corporation, the fines and penalties imposed therefore may be enforced against the officers of such corporation personally responsible for such violation, etc.

The amendment was agreed to.

The next amendment was, in section 2, page 3, line 15, before "officer," to strike out the word "each" and insert "the;" so as to read:

and any violation of any of the provisions of this act by any corporation shall be deemed to be the act of the officer of such corporation, etc.

The amendment was agreed to.

The next amendment was, in section 2, page 3, line 16, after the word "corporation," to insert the words "directly responsible therefor;" so as to read:

the officer of such corporation directly responsible therefor, and such officer may be punished for such violation as though such violation was the personal act of such officer.

The amendment was agreed to.

The VICE-PRESIDENT. Those are all the committee amendments.

Mr. HEYBURN. There are certain other amendments which have been offered other than committee amendments.

The VICE-PRESIDENT. The first is the amendment offered by the Senator from Massachusetts [Mr. LODGE].

The SECRETARY. On page 8, at the end of line 9—

The VICE-PRESIDENT. Are there further amendments?

Mr. McCUMBER. I should like to know what was done with that amendment.

Mr. HEYBURN. I did not understand it.

The VICE-PRESIDENT. The Chair understands that it has not been formally offered from the floor. It was submitted to be printed.

Mr. HEYBURN. I understand the amendments offered by the Senator from Massachusetts, three of them, have been printed and that they are on the table for consideration.

The VICE-PRESIDENT. They have been printed and are on the table, but the Senator has not offered them. They are proposed amendments at the present stage.

Mr. HEYBURN. The Senator from Massachusetts is not present. I desire to proceed with this measure, and if no Senator wishes to discuss it further I desire that we shall proceed to dispose of the proposed amendments and dispose of the bill.

The VICE-PRESIDENT. The Chair will entertain the amendments if they are offered by any Senator from the floor.

Mr. HEYBURN. I do not want the Senator from Massachusetts to be treated in a discourteous manner, but I do not know that anyone can speak for him, he having offered the amendments and not being present, although he was in the Chamber a moment ago.

Mr. ALLISON. Let the amendments be read and let us see what they are.

The VICE-PRESIDENT. The amendments will be read for the information of the Senate. The first amendment proposed by the Senator from Massachusetts [Mr. LODGE] will be stated.

The SECRETARY. In section 9, page 8, of the bill, at the end of line 9, after the word "preparation," insert the following additional proviso:

> *Provided further*, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Mr. HEYBURN. Mr. President, the provision covered by that amendment is already in the bill in sufficient form, in the judgment of the committee.

Mr. McCUMBER. I wish to say a word so that there may be no mistake about the matter. It is the bill so far as it relates to exports.

Mr. ALLISON. Where is it in the bill?

Mr. McCUMBER. On page 8, beginning in line 3; and it reads as follows:

> *Provided*, That goods intended for export shall not be deemed misbranded or adulterated when prepared and packed in accordance with specifications of the foreign purchaser, provided no substance is used that is in conflict with the laws of the country to which the goods are to be shipped, when such country having laws upon the subject does not prohibit such process of preparation.

[p. 1129]

The amendment itself is not in the bill, but the point to which the amendment is directed is covered by the bill so far as it relates to exports. I understand from the author of the bill, in a short discussion concerning the provision that it was intended to cover the matter of packing meats in borax. That is a thing that it is said can be washed off and that it does not permeate the hams. They are packed and covered with borax, and the packing industries of the country, I understand, desire that that provision be retained in the bill.

Now, why was the provision placed in the bill so far as exports are concerned? Most of the hams that are shipped out of this country are shipped to Great Britain. There is no prohibition in the food laws of Great Britain against the use of borax as a packing ingredient. In addition to that, the orders for the most part, as I am informed, which come from Great Britain, request that the hams be packed in borax, for the reason that this particular process protects the goods in transit across the water. To meet that condition we provided that the meats might be packed in accordance with the request of foreign consumers to meet the requirements of that demand.

That might bring up the question as to whether the packing in borax is necessarily deleterious. That would be a question under the bill, of course, for the courts to determine, if the bill should become a law. I can only cite the report made by the food commissioner of my own State upon that subject, if it is of any value to Senators. Does any Senator desire it?

Mr. SPOONER. As I understand the Senator, that question would not arise as to an exported article unless prohibited by the laws of the country to which it was consigned.

Mr. McCUMBER. Certainly.

Mr. McCUMBER. No law covering it.

Mr. SPOONER. Or unless they had no law on the subject.

Mr. SPOONER. Unless they had no law covering this matter.

* * * * *

I am glad it does not. If it related clear back it would be abominable, and relating back only to line 17 it is tolerably abominable, if there is any such thing as degree in that.

Now, it would read this way: That these things, although not permitted in the interest of human health—women, children, and men—to be dealt in, to be transported from State to State, to be knowingly sold by anybody to anybody in any of the States or Territories of the United States, may be shipped abroad, provided some scoundrel over there asks that they be shipped to him and there is no law there to punish him for secretly selling to people what we will not permit our people to use in this country. That is put in for the benefit of the packers primarily, but it would not be limited in its application to the packers. It applies to every manufacture and to all drugs, to all foods, to every eatable and potable thing, does it not, for which there might be a demand in other countries?

Now, I want to say a word to my friend who has this bill in charge. He spoke about pushing it to a vote this afternoon. The bill has not been long at this session before the Senate. It is a bill which I presume few Senators [p. 1130] have had time to study. I have had no time to study it for one. It is a bill the purpose of which is good, and I think it is an improvement undoubtedly on the bill considered at the last session. But it is a measure which every Senator ought to have an opportunity to read carefully. I suggest to the Senator that as no one wants to delay the bill beyond a reasonable time for debate, he ask the Senate to fix a time for a vote on the bill and amendments, say a week hence, or something of that sort. Every Senator will have notice then that he must study the bill and be ready with his amendments or the discussion, for at a certain time it will be voted upon.

Mr. HEYBURN. It was my intention before having the bill laid aside to-day to do just what the Senator has suggested, to ask that a time be fixed.

Mr. SPOONER. I had no idea I could suggest a thing to the Senator he had not already thought of.

Mr. HEYBURN. But, Mr. President, we have had this bill on the Calendar since the beginning of the present session of Congress, and, of course, due notice that the bill at the proper time would be called up for consideration.

Mr. SPOONER. Oh, of course.

Mr. HEYBURN. The consideration seems to be rather in the nature of criticism of the bill. In legislation criticism should naturally be followed by proposed amendments. If that provision should be out of the bill it should be attacked through the means of an amendment or a motion to strike it out. Objection to the bill in general terms does not result in making any progress in the consideration of a bill.

I should like to make a suggestion in response to the criticism of the Senator from Wisconsin as to that provision of the bill. In legislating we naturally take into consideration the conditions under which we legislate. The committee spent weeks and months in the consideration of this measure at this and other sessions of Congress, and we have inquired into the conditions to which this legislation was directed. That provision was not incorporated into the bill until it became apparent that there was a certain class of our export trade that did business, with the consent of the laws of the countries under which those live with whom they did business, with people who do not entertain the same views as are entertained in this country in regard to what may be necessary to preserve human health.

In other words, we ship from this country vast quantities of horse meat to be used in certain foreign countries. We do not use it at home at all. A dealer in the State of Oregon told me, having been in the business, as he said, five years, that not one single pound of that commodity had been used or consumed in this country, but that he found a market for it in the countries of Europe.

Now, if those people want that kind of a commodity, if they are presumed to be intelligent enough to determine what they want and what is conducive to their health or destructive of it, and are convinced that they have no objection to that class of commerce or commodity, there is no reason why we should constitute ourselves the guardian of their health. It is not for us to say—except it would not be permitted to go beyond a certain line, and neither do we in this bill—that those people shall not, in the exercise of their judgment, consume a certain class of articles.

* * * * *

Mr. HEYBURN. As to the use of the term "poisonous," let me state that everything which contains poison is not poison. It depends on the quantity and the combination. A very large majority of the things consumed by the human family contain, under analysis, some kind of poison, but it depends upon the combination, the chemical relation which it bears to the body in which it exists as to whether or not it is dangerous to take into the human system.

Mr. SPOONER. But this bill provides for a detrimental and diabolical combination.

> If it contain any added poisonous or other ingredients which may render such article injurious to human health.

Mr. HEYBURN. The word "added" is a word of limitation there. The word "added" simply means that nothing shall be added to the poisons already existing in the substance. Take any substance. Poisons may be extracted from fruit, from the kernel of the peach, from acids contained in fruits. The word "added" is a word of limitation. In other words, after providing carefully against poisons, recognizing the fact that poisons exist independent of any human action in certain commodities, we have provided that no added poisonous or other ingredient which may render such article injurious to human health shall be deemed to be adulterated. That is under the definitions of adulterated articles.

Mr. SPOONER. "Added" poison. That implies that it is an additional poison.

Mr. HEYBURN. Let me make a suggestion to the Senator.

Mr. SPOONER. If the Senator will be permit me, he misapprehends me. I am not troubled about the word "added." I am troubled about the conclusion here that it is an article thus constituted injurious to human health. The Senator would not give or sell to me, knowingly, an article injurious to human health.

Mr. HEYBURN. It is forbidden by the terms of this bill.

Mr. SPOONER. Would he give it to a Frenchman?

Mr. HEYBURN. No; and this does not permit that it shall be given to a Frenchman.

Mr. SPOONER. Yes; it permits that it may be sent anywhere in the world if some rascally merchant asks that it be sent to him and there happens to be no law to prohibit it.

Mr. HEYBURN. But the committee inquired as to the existence of laws in foreign countries, and there are other words of limitation in this clause that I think the Senator has overlooked.

Mr. SPOONER. Very likely. I have not carefully read the section.

Mr. HEYBURN. For instance, this is the limitation:

> Provided no substance is used that is in conflict with the laws of the country to which the goods are to be shipped.

The fact is that foreign countries with which we do business have more stringent laws than we have, and I am sorry to say that in some instances they are engaged in the special manufacturing of articles of commerce for the American market that they are not allowed to sell in the country where the articles are made, and we here have undertaken to be more generous in our treatment of them. If their laws forbid it, we do not allow our people to violate their laws in the interest of commerce.

Mr. SPOONER. What I should like to inquire is this: If the Senator is correct in saying that their laws are more stringent than ours in this respect, what is the object of this proviso? What do the packers want it for?

Mr. HEYBURN. The packers who do business with countries having these laws are in exactly the same position as the man who manufactures a bogus article in one of our States for the purpose of finding a surreptitious market for it in another State. That is the position they are in, and we put them in that position. This bill does not undertake to prevent the manufacture of these articles, but it undertakes to prevent the circulation of them and we urge as one of the strongest reasons for the enactment of this legislation the protection of the State into which it shall be sent. We are recognizing the same principle in dealing with these foreign countries, because we realize that in the case of these goods, either in violation of their law or in violation of this law, once they are out of the jurisdiction where they are made and landed in unbroken packages in a foreign jurisdiction, whether it be in a State or beyond the waters, it is a dangerous thing to have them in a community, and makes trouble for foreign countries just as it makes trouble for States here. One of the highest functions performed by the legislation proposed by this bill is that it protects the States against imposition from other States and that it protects the foreign market, which is constantly a critic of our country and our commerce, by preventing our people from interjecting such an article into the foreign market under conditions where it might become a contraband article and might not, according to whether it was discovered. It places our people and foreign people upon the same status in that regard.

[p. 1131]

Mr. McCUMBER. The word "prepared," as I have stated, covers the method of protecting the article. It may be packing; it may be a preparation to make ready for packing.

Mr. SPOONER. What does the word "adulterated" mean, then?

Mr. McCUMBER. We certainly understand the word "adulterated." It shall not be deemed to be adulterated, as applied in this particular case, by the mere preparation of something over it which is in accordance with the laws and not against the laws of the State or country to which it is consigned.

Mr. LODGE. Mr. President, I wish to call the attention of the Senator from Wisconsin to an amendment which I have offered to that section as an additional provision, which I think would cover it as a substitute:

> That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Mr. SPOONER. What particular Massachusetts product does the Senator have in mind?

Mr. LODGE. I have no particular Massachusetts product in mind any more than I suppose the Senator from Wisconsin has Wisconsin products in mind in opposing the bill.

Mr. SPOONER. I am shooting at the flock.

Mr. LODGE. It is needless to say I have in mind fish; but it applies to a great many other articles. Salt fish are widely distributed not only in this country, but there is a very large West Indian trade.

Mr. SPOONER. I must say that the amendment proposed by the Senator from Massachusetts seems to be admirably adapted to the object which he has in view, and is not susceptible to the objection which I have been making to the other provision. Is it satisfactory to the Senator who has charge of the bill in place of the proviso?

Mr. HEYBURN. I think the Senator has overlooked the fact that by the provisions that are under criticism under the head of "definitions" the proviso does not relate to the process of preparing goods for the market or to the sale or the disposition of them. It is a limitation under the head of "definitions" which begins at line 22, page 5. There the bill undertakes to give the definitions of the various subjects of the provisions of the bill. The Senator has read at the top of page 8, under the head of "Fourth. If it contain any added poisonous or other ingredient which may render such article injurious to human health." That is simply one of the definitions, and there are many definitions, covering three pages.

[p. 1132]

The VICE-PRESIDENT. The amendment proposed by the Senator from Massachusetts will be read.

The SECRETARY. On page 8, line 9, after the word "preparation," insert the following additional proviso:

> *Provided further*, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Mr. LODGE. Mr. President, that affords a perfectly ready test on any article of that sort. The officers charged with this duty will have nothing to do but to take a specimen of that kind and treat it as it would be treated if prepared for consumption. If after that treatment they still find that it contains poisonous substances, it becomes obnoxious to all the clauses of the bill. But if it is found not to contain such substances after its preparation for consumption, then, no matter what the external application was, it is held to be wholesome and unadulterated.

There are certain products which have to be protected by applications or by wrappings, which inevitably contain matters which in themselves are deleterious to human health, but which are entirely disposed of the moment the article is prepared for consumption. This amendment does not remove the control over those articles or exempt them. It simply provides that they shall be tested in a certain way—that is, after the external application has been removed—in order to give a fair test. It seems to me that it is not an unreasonable proposition.

Mr. McCUMBER. Mr. President, I think the Senator will find a certain defect in this amendment, which undoubtedly may be covered by a further amendment. I will take an example, so that it will be made clear to him. Let us take this question of the packing of hams, ribs, etc., in borax. That is a common method of packing them for shipment for interstate commerce. The amendment which the Senator proposes provides that if the things that are used for an application to preserve them, though they may be poisonous and injurious in themselves, can be separated by washing—by maceration in water—then those goods may be shipped.

Now, let us take the simple illustration we have had of the shipping of hams. You therefore provide by law that no matter how poisonous the ingredient, or whatever you may call it, is used for an application it shall be allowed free transportation from one State to another. It is under that guard, that protection, until it is sold in original packages, we will say, and enters into the property of a State. After it enters into the general property of the State we have no further control over it. There is nothing that compels the consignee of the goods to use this macerating process, but he sells it out as he does to-day. Now, let me give the Senator an example of that.

Mr. LODGE. If the Senator will pardon me for interrupting him, I think he misapprehends the precise point of the amendment, which is that the act shall be construed as applying only when said products are ready for consumption. That is when the man authorizes these articles and tests them at the manufactory, where, I suppose, all the tests are to be made, they are not to be tested until these external applications are removed. Then if they show poisonous ingredients they are, of course, prohibited. If they do not show them, then it is demonstrated that the poisonous substance is confined to the wrapper or some external application.

Mr. McCUMBER. But, Mr. President, who will test them?

Mr. LODGE. How are you going to test anything?

Mr. McCUMBER. We must test them before they reach the foreign country to which they are consigned.

Mr. LODGE. That is precisely what I mean the test shall be. This is only defining the nature of the test.

Mr. HEYBURN. I suggest that they are not within our jurisdiction. That is the trouble. When they are ready for use they have passed beyond our jurisdiction.

Mr. LODGE. I am quite aware of that. This is only defining the method of the test. The test is to be made at the time and place that the bill provides for. This only says when that test is made the articles shall be tested not as they are prepared for shipment, but as they are prepared for consumption.

Mr. HEYBURN. As they will be when ready for the consumer?

Mr. LODGE. As they will be when ready for the consumer.

Mr. HEYBURN. Then they will have passed out of our jurisdiction.

Mr. LODGE. No; what will prevent the testing officer from testing the article when ready for consumption?

Mr. HEYBURN. Because it will be necessary, when it reaches the store, for the retailer to remove.

Mr. LODGE. Does the Senator mean that the testing officers are to test every can that goes out?

Mr. HEYBURN. No; but the Senator is taking a case where the articles are deleterious to health by reason of the process of preparation. When they pass out of the unbroken package into the general channel of business we have lost jurisdiction of them—this bill has lost jurisdiction of them.

Mr. LODGE. I quite see that.

Mr. HEYBURN. And a provision as to what conditions would then exist is not a protection.

Mr. LODGE. No; but at what point is the test made?

Mr. HEYBURN. Well, if the test is made at the manufactory you simply determine what condition would exist if certain things were done; but you do not protect the person into whose hands the commodity finally passes.

Mr. LODGE. But I am taking some article now that does not involve a question of external application. How are you going to test any article, and where?

Mr. HEYBURN. This bill provides that you may test the article on the shelf of the retailer.

Mr. LODGE. Very well. This does not interfere with that in the least.

Mr. HEYBURN. Then it is in the hands of the householder.

Mr.LODGE. Not at all. It is quite possible to remove the external application and put it in water and test it and put it back.

Mr. HEYBURN. Then it is to be done by the consumer?

Mr. LODGE. Not necessarily.

Mr. HEYBURN. Some one goes to a store and buys a ham nicely wrapped and prepared and takes it home. The merchant himself does not remove this deleterious condition at all, but it does depend on the consumer as to whether he will remove it. Suppose he is not learned enough in what is necessary to preserve his health to do it and it is not removed and his health suffers, where is the protection this bill would afford him?

Mr. LODGE. That opens up a very extensive question. As I understand it, the Senator expects that every individual ham on the shelves of a retailer is to be examined by a Government officer.

Mr. HEYBURN. No.

Mr. LODGE. Then if it is not, he is going to test some hams.

Mr. HEYBURN. The wisdom of this bill becomes apparent. We prevent men from doing that which can ultimately result in injury to the uninformed. That is provided by the bill.

Mr. LODGE. No; but what I want to get at is where the test is applied. The Senator says it is to be done on the shelves of the retailer. I take it at any point.

Mr. HEYBURN. At the factory.

Mr. LODGE. Well, at the factory. Does the Senator propose to have every ham that goes out of the factory tested before it goes out?

Mr. HEYBURN. No; but we propose to place a responsibility upon the manufacturer, under which he will not dare to violate the provisions of this law or of the State law.

Mr. LODGE. Very well; that is all I want; and I do not see how my amendment interferes with that the least in the world.

Mr. HEYBURN. As I understand it, if the Senator will pardon me, it would allow the manufacturer to surround the commodity with conditions that would depend as to whether they were injurious or not upon the intelligence of the consumer.

Mr. LODGE. But you propose to allow him to do that to the foreigner, and a great deal more than that.

Mr. HEYBURN. No; we simply say that goods for foreign trade shall conform to foreign laws.

Mr. McCUMBER. Let me give an example.

Mr. LODGE. I am still unable to see why it is not fair. Take candy, for example. There may be any number of poisons in the box or whatever the candy is wrapped in. There may be any number of deleterious substances in it. That is the wrapper. That is the external application in that candy. Now, is that to be shut out of the market on account of that? How is he to test it? Of course he tests the candy as it is consumed, not as it is not consumed.

Mr. HEYBURN. Mr. President, the [p. 1133] principle of the bill is to prevent the manufacture of the forbidden things and the placing of them on the market. At the last session of Congress one of the objections that appeared to me most reasonable to the bill proposed then was that it went to the consumer or the retail dealer rather than the manufacturer. In this bill we have undertaken to see, so far as the legislation could do it, that there is no manufacturer to put upon the market and send out these things. That is what we have undertaken. If we relax to the extent of the suggestion in the Senator's amendment by allowing the manufacturer to do something admittedly wrong in the hope that the wrong may be cured at some period between the mill and the mouth, then you have defeated the purpose of the measure.

Mr. LODGE. I deny absolutely that it is admittedly wrong. There is an immense number of articles—the Senator has mentioned them, hams and things of that sort—that require external applications which in themselves are deleterious. This amendment of mine is borrowed from the House bill that came to us and is in the exact language of the bill which passed the other House. It is only here that it has been discovered that it was going to lead to such abuses; it is only here that objection is made to that carefully guarded amendment of mine, which simply prescribes the method of the test and defines it, providing that nothing in the article itself shall be poisonous. That is objected to in a bill which contains a clause which, in so many words, permits us to sell adulterated goods to foreigners.

Mr. President, it seems to me that is hardly fair. I am not proposing in this amendment any strange or new thing. The other House adopted it. I merely copied it from their bill. It is only here that it has been eliminated.

Mr. McCUMBER. Mr. President, I think we may take a little illustration, and we shall then be pretty well enabled to understand the real effect of the amendment of the Senator from Massachusetts [Mr. LODGE]. Now, bearing in mind that the object of the bill is to prevent the manufacturer or anyone else sending goods into interstate commerce which, when they arrive in the store of the retailer or in the home, are poisonous or injurious—if that is a good object of the bill, the next question, then, is whether the amendment of the Senator is diametrically opposed to that object.

Let us follow it out in its application. I will take the Chicago packing houses. They make an external application of borax upon their hams. They use great quantities of it. That borax permeates the meat to a certain extent. Now, we will admit that it is removed by maceration in water or that otherwise you may eliminate entirely all of the boracic acid that is absorbed by these meats in the process—we will admit that to be true. That entitles it to shipment. Then it goes to my State or to any other state in the Union. It goes into the hands of the dealer in meats or the grocer. There is no law on earth to compel the grocer or the dealer in meats to use that macerating process to remove the boracic acid. The chances are nine out of ten that he will not touch it, that it will go out to the consumer just exactly in the condition it was when it left the packing house in Chicago. Therefore the object of the bill, so far as that particular kind of food is concerned, would be entirely destroyed. That must necessarily be the effect of the amendment.

Mr. LODGE. Will the Senator allow me to ask him a question?

Mr. McCUMBER. Certainly.

Mr. LODGE. Then, do I understand that the consumer eats the ham without cooking it?

Mr. McCUMBER. I did not say that.

Mr. LODGE. I ask the Senator, does not the consumer soak the ham and cook it before he eats it, or does he eat it just as it comes from the grocer? I supposed hams were almost always soaked and cooked before being eaten; but that may be the result of my ignorance.

Mr. McCUMBER. The consumer does not know anything about the ham containing borax.

Mr. LODGE. Hams, as I understand, are always soaked and cooked before being eaten.

Mr. HEYBURN. Ninety per cent of the consumers take the hams as they come from the grocer and cook them.

Mr. LODGE. I understand the Senator from Idaho [Mr. HEYBURN] to say that 90 per cent of the consumers eat them as they come in the covering from the grocer.

Mr. McCUMBER. The Senator has a very vivid imagination to get that understanding.

Mr. LODGE. I did not say the Senator from North Dakota said so; but

I understood the Senator from Idaho had said so. I think he made the remark about 90 per cent doing that.

Mr. McCUMBER. He said 90 per cent, but I did not understand the Senator from Idaho to make the remark that they were not cooked. I do not understand that the mere process of cooking will materially affect the boracic acid that is contained in the meat.

Now, let me give the Senator an example. I have before me the report of the food commissioner of my own State. He examined very thoroughly the hams that came from the great packing houses of Chicago and Omaha. The result of his investigation proved it to be a fact that every pound that was inspected by him contained from 10—never less than 10—up to 20 grains of boracic acid. When given for medicinal purposes, from 5 to 10 grains is the dose that is given in a day. So that if one would consume 1 pound of these hams packed in borax, and thoroughly impregnated with boracic acid, he would consume about four times the average dose that would be given in any case where that acid is given for medicinal purposes. I simply suggest this as a reason why there should be at least some modification of the Senator's amendment.

I will say to the Senator here that I agree with him perfectly that if borax is absolutely necessary and is the only preservative, and it can be eliminated by the use of a little washing with water, possibly it is best that it should be used; but, from such information as I can obtain, it is not necessary, execept to preserve those meats which are already tainted or injured to a certain extent. I mean for inland commerce. In crossing the ocean it is impossible to keep such meats from absorbing a great deal of moisture, and it has been stated—I think it was stated before our committee—that it is almost essential, so far as the foreign trade is concerned, to pack them in borax. As I understand—I will not be certain—where they are so packed, under the laws of Great Britain, this must be removed before they go into the market generally. If that is true there is absolutely good protection to the consignee of such goods so packed. But there is absolutely no protection under this amendment for the consumer of goods which have been adulterated, or at least so packed that they become injurious to health.

I shall be glad to have an amendment made in some way so that it will be reasonable, but I really think it would be unreasonable as the Senator has framed it.

Mr. LODGE. Mr. President, I do not want to break the bill down by any amendment. That is not my purpose. I do not think, however, that we want to make a bill to be used as a means of oppression and which could be used as against honest traders and honest manufacturers, as this undoubtedly could be as it now stands.

I had supposed--and I thought the amendment covered that point—that submersion in water was a necessary part of cooking or preparing hams for the table. I have been so informed on what I thought was good authority, but I am told now that it is not.

* * * * *

I do not want to oppose the bill, but, on the contrary, I am heartily in favor of it. I do not, however, think it is desirable to make it oppressive and to make it so that it will interfere with reasonable trade or prevent men from trading who have only an honest purpose in view.

In the matter of fish, about which the Senator from Wisconsin asked me, I will say that fish are preserved by salting, to begin with. As I understand the packing that is put around the packages when the fish are prepared [p. 1134] in what is known as the "shredded form" is simply to keep them in the package. To interfere with that would interfere enormously with trade in every direction, both foreign and domestic.

Mr. McCUMBER. Mr. President, I do not think the Senator will find anything in the bill that will in the slightest degree tend to do an injustice; on the contrary, I can not conceive of a law being drawn with greater care and throwing greater safeguards around the defendant in any criminal prosecution than is found in this bill.

We have no provision for an inspector, and my opinion is that these cases will be determined by the court when they come up. They must be determined by the court. There is no law requiring, and there is nothing in this bill requiring, that a shipper shall not use borax, and all of it that he desires; but if it were found that the use of borax as a packing for meat was absolutely deleterious as it is usually used by people, then in a case before the courts that question would come up and it would be determined, and determined, of course, in that case only, but that would be a precedent for other cases.

I can not see that any person has a valid right to use any such packing on any meat as would be injurious to the public, and if depriving him of the right to so pack meats is injurious to him it is depriving him only of an opportunity to do a wrong to the public.

The Senator has spoken several times about the method of preparing hams. I do not myself pretend to be a cook, and I do not know what information of a specialized character the Senator from Massachusetts may have upon the subject, but I do know that if you take the ordinary smoked ham, or the sugar-cured ham, or whatever you may call it, as it comes from the manufacturer it is boiled without first being soaked; certainly is not first soaked in water, whether it is fried or otherwise. There may be cases in which it may be soaked to take out the extra amount of saltpeter or salt that is in it, but not as it is used in the ordinary household. There is no occasion for it, unless they think that there is something in it that is improper. I say that the public has not got that knowledge generally.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Massachusetts [Mr. LODGE.]

Mr. HALE. It is getting a little late, and there is a desire that we have an executive session.

Mr. HEYBURN. Will the Senator yield to me for a moment?

Mr. HALE. I yield to the Senator.

Mr. HEYBURN. Mr. President, I ask at this time that a date be fixed for taking a vote on this bill. I ask that on Monday, January 22, the bill and the amendments may be considered and disposed of.

Mr. McCUMBER. I would suggest to the Senator that he give a longer time than that. I want to see every amendment Senators may have to offer properly considered, and I want them to have plenty of time to read the bill. I hope the Senator will not ask that a time prior to February, and possibly prior to the middle of February, be fixed. I think we can get a vote on the bill by that time.

Mr. HALE. Mr. President, I would suggest to the Senator that we are just beginning the consideration of the bill: Important amendments have been offered that have not yet been considered, and I suggest to the Senator that he does not try to-day to fix a time for a vote on the bill. The Senator knows that he will have no difficulty in getting some reasonable time fixed, but there are other matters that are important, and I hope the Senator will not at this time attempt to secure an agreement for a final vote.

Mr. HEYBURN. My suggestion as to a date for a vote was tentative only. I am not inclined to ask that the time for the consideration of the bill shall be shortened beyond reason. The 1st of February would be a reasonable time, but, inasmuch as the attendance at this particular time is somewhat meager, if the Senate is not ready to consider the matter now, I will give notice that to-morrow at the conclusion of the morning business I shall ask the Senate to fix a time to take the final vote on this bill. I will leave it in that way. [p. 1135]

PURE-FOOD BILL.

Mr. HEYBURN. I ask unanimous consent that the Senate proceed to the consideration of Senate bill 88, being what is known as the "pure-food bill."

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Mr. KEAN. Do I understand, Mr. President, that we are proceeding with the Calendar under Rule VIII?

The VICE-PRESIDENT. Under Rule VIII. The question is on the amendment heretofore submitted by the Senator from Massachusetts [Mr. Lodge], which will be stated.

The Secretary. On page 8, line 9, after the word "preparation," it is proposed to insert the following additional proviso:

> *Provided further*, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Mr. McCUMBER. Mr. President, we had that amendment under consideration the day before yesterday, but it was not disposed of. I desire, however, at this time not to speak further especially upon that amendment, but more particularly upon the general phase of the entire bill. I shall take but a short time, however.

Mr. President, this bill has now been, since I have been more or less interested in it, before the Senate for about five years. It has passed the other House twice, not exactly in the same form as the pending bill, but in a similar condition. It has been almost impossible to secure any attention to or consideration of it in the Senate. I feel, however, that the remarks which have been made in the Senate upon the bill, and which have finally been taken into consideration by the public press of the country, have at last awakened a sentiment and have intensified that sentiment into an impetus on the part of the press and the public that this bill should have consideration —an impetus which is naturally having very good results.

Mr. President, a great number of the leading magazines of the country have devoted considerable time and attention to the consideration of this matter. I believe the time has now arrived when we at least may call upon the Senate to give it that consideration which I feel—and which I feel after long study—it is entitled to.

I am not going to make another speech upon this pure-food bill. There are two reasons that justify me in this. The first is that I have spoken two or three times and gone particularly into every feature of what was practically the same bill. Another is that I am impelied to be somewhat careful in my remarks on account of the kindly and generous suggestion that was made by the Senator from Massachusetts [Mr. Lodge] as to why the bill had not received greater consideration near the close of the last session of Congress.

There are certain principal objects of this bill that ought to be considered generally. The first object is to supplement the efforts of the States. Nearly every State in the Union already has a pure-food law or a code pertaining to the introduction of pure food. The food commissioners of the several States have been busily engaged in attempting to eradicate the evil of impure food, but they are met, Mr. President, at every point by the rules of interstate commerce and are brought face to face with a condition over which the State itself has no control. This bill is intended to supplement the laws of the several States so that they may reach the entire subject.

The next object is to reach the root of the evil itself—the manufacturer. The moment that we strike at the manufacturer of unwholesome, unfit, adulterated, or misbranded articles of food, we have reached the evil in such a way that we may be able to control it. As I have stated, inasmuch as about 95 per cent of all of the impure and improper foods are consumed in States other than those in which they are manufactured, it is quite necessary that the authority having control over interstate commerce should be the authority that should deal with the subject of the manufacture of those products for the purpose of transmitting them into other States.

Another reason is to protect the honest manufacturer and dealer. Every honest manufacturer in the United States is pleading for this bill, because he says that if he manufactures his goods in accordance with the pure-food laws of the several States or Territories, it is impossible for him to compete justly and fairly with the bogus articles that are put in competition with those manufactured by him. No elaborate discussion of that feature of the case is needed.

Another object is to prevent the evil of diverse rulings of the several commissioners of the States having pure-food laws. For instance, there is a manufacturer using certain dyes in order to make his goods appear more presentable. There is a rule in Iowa which requires certain statements to be made and to appear on the can; in another State they are made in another way; while in other States they have no rule upon the subject. Even those States that have similar rules or laws will, through their food commissioners, give dissimilar constructions. One of the objects of this bill is to assist the honest dealer in this character of goods to meet the requirements of all of the States.

We well know, Mr. President, that the moment we do pass a general law upon this subject, by virtue of that law covering ninety-odd per cent of all of the commerce in impure products, that law must become the dominant law; and, if there is any difference, the State laws will soon accommodate and modify themselves in conformity with the national legislation.

Another object is to promote honesty and fair dealing and decency in the sale and barter of food products; but, above all, to shield the public themselves, Mr. President, against not only the use of poisonous articles, but especially to protect them against deceit or imposition of any character in the matter of purchasing their food.

Now, what is it that this bill does [p. 1216] not do? I want to state, first, that it adds no new machinery whatever. We already have in the Department of Agriculture a chemical division. That chemical division has already the authority, and we are appropriating money year by year for the very purpose that is indicated in this bill.

The VICE-PRESIDENT. The Chair will state that the consideration of the bill is proceeding under Rule VIII, which limits speeches to five minutes on the part of any Senator. If there is no objection, however, the senator may proceed.

Mr. LODGE. I ask unanimous consent that the Senator from North Dakota may be permitted to proceed without regard as the limit of the rule.

The VICE-PRESIDENT. Without

objection, the Senator from North Dakota will proceed.

Mr. McCUMBER. I want to correct here, Mr. President, a wrong impression, an impression which we seem not to have been able, even during the four years of discussion on this floor, to entirely dispel, and that is the impression that we by this bill, or by any bill that has been reported by the Committee on Manufactures of the Senate, have attempted to grant the power of fixing a standard of food and drug products in any Department or in any person whatever. There was a section in the House bill as it twice passed the House, which provided for the fixing of standards of food and drugs by the Secretary of Agriculture. In both instances where we have passed upon bills from the House that section 7 has been absolutely eliminated. There is no standard whatever provided by this bill, or attempted to be provided by it. The only standard is that which is fixed by the definition of adulterated and misbranded articles. Any article that will measure up to that standard has free access into any State in the Union. In this we have followed as nearly as possible the laws of the States. The definition conforms almost strictly to the definitions which have been adopted by the State pure-food laws of the State of Kentucky.

This bill does not determine, Mr. President, what a man shall eat. He can eat anything that he desires. It does not determine what a man shall ship. He can ship anything that he desires. All that it does require is that the article shipped, if it be adulterated or misbranded, shall bear the evidence of such adulteration or misbranding upon the cask or other container of the article that is shipped. I do not think that anyone can object to that requirement.

Mr. GALLINGER. Mr. President—

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from New Hampshire?

Mr. McCUMBER. With pleasure.

Mr. GALLINGER. My attention was attracted by a remark the Senator has just made that this bill does not prevent any person from eating what he may please, but that it requires articles of food to be sold for just what they are. I do not know whether the article I have in my hand is authentic or not, but it is an article from the National Druggist of October, 1905, from which it appears that the pure-food commissioner of Minnesota—of course he is a State official—has placed Lea & Perrin's Worcestershire sauce, which most of us have been using for a great many years, absolutely under the ban, and has prevented its importation and sale within the limits of the State of Minnesota. Perhaps the Senator has seen this article. If such a thing has been done, I think it rather a despotic exercise of power by a State official, and if this bill is going to put in the hands of the Government corps of so-called "scientists," which exists in the Department of Agriculture, many of them looking for something to do day by day and not finding it—if it is to put into the hands of those young men the power to absolutely prohibit the importation and sale of an article in this country as well established as is Lea & Perrin's Worcestershire sauce, I think it is an extraordinary power.

I want to vote for this bill, and I presume I shall vote for it, but I hope it will be so guarded in its terms—I have read it casually, but not very carefully—that no such power as seems to have been exercised by this State official will be exercised in the Department of Agriculture through those young scientists who, of course, will be anxious to do something to attract attention.

Mr. McCUMBER. Mr. President, if the Senator—

Mr. NELSON. Will the Senator from North Dakota permit me a moment?

Mr. McCUMBER. I wish first to answer that, and then I will yield to the Senator.

Mr. NELSON. I want to answer it.

Mr. McCUMBER. I will give the Senator an opportunity a little later. I desire to say that if the Senator from New Hampshire [Mr. GALLINGER] had even casually read the bill he would find that no such possible power as he has indicated is vested in any man or body of men by this bill, but that it is impossible that such power should be so exercised in the State of Minnesota or in any other State, provided the Worcestershire sauce referred to by the Senator is all that he claims for it. The Senator must understand that there is only one way and one final method of deciding any question of purity or impurity, of adulteration or nonadulteration, of misbranding or want of branding of any article, and that is in the usual form, in the courts of the United States. Those courts will determine all questions of that character. No head of a Department or anyone else can finally determine that question. The Secretary of Agriculture in collaboration with the heads of other branches will ascertain whether or not, in his judgment, certain ingredients or certain foods or drugs that are sold measure up to the standard which is required in the bill itself in the shape of definitions. If those definitions are not correct, then let us modify them until we make them correct. I think, however, there will be little objection to the definitions themselves.

Mr. SPOONER. Mr. President—

Mr. McCUMBER. Then, as to whether the goods measure up to that standard will be a question for the courts and not for the Secretary of Agriculture, or for a chemist or for a number of chemists, or anyone else. I now yield to the Senator from Minnesota [Mr. NELSON], and then will gladly yield to the Senator from Wisconsin [Mr. SPOONER].

Mr. NELSON. Mr. President, I only rose for the purpose of making a brief reply to the remarks of the Senator from New Hampshire. I am not aware of the fact that the pure-food commissioner of Minnesota has made any such decision. I do not think he has, because I have not found that there has been any practical embargo on the use of that sauce. So far as I know we have had the privilege of using it right along.

But I want to say, in connection with this matter, to the Senator from New Hampshire, assuming that the commissioner of Minnesota has taken that view of the case, this would not cure that matter. It could not cure it otherwise than that this would be paramount and controlling so far as it affected interstate commerce. If the commissioner of Minnesota made a mistake and has gone too far, certainly this bill would not affect that matter otherwise than to afford relief so far as it pertained to interstate commerce. If any injustice has been done by the commissioner of Minnesota, relief against that must be obtained either from the authorities of Minnesota or from the State or Federal courts. This legislation can certainly not affect that matter, except in the manner I have indicated.

The good effect of this law, assuming it to be true, as the Senator from New Hampshire has stated is that this general doctrine of the government ingrafted in the bill will, wherever there is a conflict between the State law and this law, leave this law controlling and be the means of equalizing and doing justice to all parts of the country, instead of having the difficulties we now encounter in many of the States.

Mr. McCUMBER. Of course, the Senator understands well that we can not interfere with what the pure-food commissioner in the State of Minnesota may do in matters that purely affect the police power of that State, after the goods have been sold there.

Mr. GALLINGER. Mr. President, I must have been unfortunate in the statement I made or the Senator would not raise that question. I raised the question merely for the purpose of making the suggestion that I trusted no such power was placed in the hands of the Secretary of Agriculture in this bill as seems to have been exercised by this State official in the State of Minnesota.

Now, concerning the Minnesota matter, I have only the authority of the National Druggist, which is one of the most reputable drug papers in the country. This article says that an edict has gone forth from this State official putting this particular article under the ban and prohibiting its importation into the State of Minnesota. If that be so, of course we can not help it, but it is an extraordinary exercise of power, it seems to me.

Mr. McCUMBER. I doubt if that statement can be regarded as correct, for the reason that the State official of Minnesota could not prevent, by order or otherwise, the shipment of any proper and pure article into the State, nor could he even prevent the shipment into the State of an adulterated article unless it was absolutely and unquestionably of so poisonous or unfit a character that it could not be considered as a commercial product. Under the construction of the interstate-commerce clause of the Constitution goods other than those which I have mentioned may be shipped into a State contrary to the laws of the State and may be sold in the original unbroken packages in that State.

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Mr. GALLINGER. Mr. President, notwithstanding that, it is just possible this official may have gone beyond his powers in that regard. At any rate, I have every reason to believe that the statement made by this reputable publication is correct in a general way. What I wanted to guard against or to have the Senators who have this bill in charge guard against is the possibility of putting a power of that kind in the hands of the Department of Agriculture.

Mr. McCUMBER. I believe the committee has been as careful as the Senator would have been to see that no such power is placed in the hands of any person or any Department. I believe, Mr. President, that all questions of that kind should be decided by the courts. That is what they are for. This bill simply determines that they shall be so decided by the courts and not by the Agricultural Department or any other Department.

Mr. GALLINGER. I am very glad to know that, Mr. President. I think that is a very wise provision, and I presume under that provision the citizen will have ample protection. My only anxiety about the bill this year, as it was last year, is to have it a fair and reasonable bill, a bill that will not be oppressive so far as the citizen is concerned and yet will be protective so far as the interests of the public are concerned.

Mr. McCUMBER. That is the end we seek to attain.

Mr. GALLINGER. I will say, if the Senator will permit me, that I am not so much exercised about these misbranded and so-called "poisonous" substances as some Senators are. I think we are running amuck on that matter to a very considerable extent. Human life is being lengthened in place of being shortened decade by decade, notwithstanding all the terrible things that are read of, notwithstanding the microbes and the germs and the bacilli, and all that sort of thing. Of course, if we believed all that these scientists say, these young fellows in the Department of Agriculture, we would not dare breathe, eat, or drink. But I do not believe it. So I am not as much alarmed as some. And yet I want to vote for a reasonable bill, and I hope this is a reasonable bill.

Mr. McCUMBER. I think what the Senator wants, and what all of us want more particularly than anything else, is that when we go into the markets to buy an article of food or a drug to be used in the family we shall get what we call for.

Mr. GALLINGER. And what we pay for. That is right.

Mr. McCUMBER. And what we pay for. That is the principal feature to be considered.

The Senator has alluded to the increase in the length of the life of the people. I think the Senator, however, will agree with me that the increase has not been so much possibly on account of the food we have now being better than the food we used to have as it has been on account of the advance of science, medicine, and surgery in the protection of the lives of children, and also in the home, in the greater comforts, and the lessening of the troubles we were afflicted with when people had not the means they have at the present time to care for themselves. I believe those have been the potent factors in the longevity of the human race, at least in the United States. It has been demonstrated that since they have sterilized the milk that is required to be sold, for instance, in certain cities, or since they have cared for it, there has been a wonderful decrease in the percentage of the deaths of children using that milk. I believe that much has been accomplished in that way, and much has also been accomplished in the matter of better foods.

Now, Mr. President, who are those who desire this bell? So far as I know, every reputable manufacturer in the United States wishes a bill of this kind. So far as I know, every reputable manufacturer of drugs and of liquors, as well as food products, desires a bill of this character to be passed. The people who have been defrauded, those whose families have been murdered, also join in the request. The percentage of the impure and adulterated foods in the United States is today becoming simply enormous as compared with twenty, thirty, or forty years ago.

Now, who are those who oppose this measure? There are a few classes. I do not know of any reputable manufacturer who opposes it, but there are, first, the whiskey blenders. I had a letter a short time ago, and which, I think, I presented here before, from the National Association of Liquor Dealers, which they sent out to their trade, and by which they desired to raise the sum of $250,000. In that circular letter they declare that they, by their efforts alone, had succeeded in preventing the consideration of this measure in the Senate. I believe that to be wholly false. It was simply used as a method of securing subscriptions from the trade to carry on the crusade against a national law.

Now, why are they opposed to it? Simply because instead of blending two or three different brands of good spirituous liquors, such as will stand the test that is required by the Government, they use a number of different kinds of oils and flavors, and simply change the poorest liquor to some other character or quality by the infusion of these ingredients, and then sell it for the best character of whiskies.

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Mr. McCUMBER.

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The provisions of this bill, Mr. President, are practically the same as they have been for the last four years. There is substantially no difference whatever. There are some slight additions and modifications. I think when Senators commence to study it out, while I have no doubt many of them will consider that it ought to be modified, those who have had the bill in charge will cheerfully agree to such suggestions as they may make with the intent to secure such a bill as will be satisfactory, and it will result in the final passage of a bill that will meet the purpose desired. It is not drastic in any of its provisions.

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It was upon the word "knowingly." We may look over the pure food bills of most of the States — I will take Kentucky, for instance, as the standard, because I believe that the people of Kentucky have a better food law than any other State in the Union, taken as a whole.

The word "knowingly" is not generally used in these prohibitions. I have heard of no dire effects because of the omission of that word in nearly all of the food laws of the States. I desire to say freely to the Senator from Wisconsin that I am afraid the result of the insertion of the word "knowingly" into the section in which I believe it was inserted the other day will open wide the gates for any person almost to escape; that it throws a shield around the person who would desire to disobey the law as it would finally be in this bill.

Now, what is the necessity of the word "knowingly," as applied, we will say, to the retail dealer? Of course, it will be claimed that he has no knowledge of the inferiority, of the misbranding, or of the adulteration of the articles that he uses, and, therefore, that he should be protected by the use of the word "knowingly." But if the Senator will look at the whole bill it will be seen that the retail dealer is absolutely protected, because from the wholesale houses or the manufacturers with whom he deals he may secure, as a condition precedent to his purchase, a simple guarantee in writing that the goods conform to the laws of the United States and particularly to this act. When he has done that he is absolutely protected without any possible question.

Mr. GALLINGER. On that point—

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from North Dakota yield to the Senator from New Hampshire?

Mr. McCUMBER. With pleasure.

Mr. GALLINGER. How is the guaranty from the wholesaler to protect the retailer if he is found guilty and is fined and imprisoned according to the terms of this bill?

Mr. McCUMBER. According to the terms of the bill he can not be found guilty and imprisoned if he has that guaranty.

Mr. GALLINGER. I am not sure about that.

Mr. McCUMBER. That is certainly the provision of the bill.

Mr. HEYBURN. Section 10.

Mr. SPOONER. Mr. President—

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Wisconsin?

Mr. McCUMBER. With pleasure.

Mr. SPOONER. I appreciate the force of the argument of the Senator from North Dakota as to the danger of an improper use of the word "knowingly" in a bill of this kind. The Senator entirely misapprehends my attitude if he thinks that I intended to advocate that qualification everywhere in his proposed statute. I suggested one place in which the commonest kind of justice to the people of the United States seemed to me to require that that word should be inserted, and it arose out of this provision to which the Senator from Idaho refers in section 10:

> That no dealer shall be convicted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating such article.

Mr. McCUMBER. I will say to the Senator I did not understand that the word "knowingly" was limited to that particular condition.

Mr. SPOONER. Let me finish:

> **Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.**

Under that provision of the bill the domestic dealer, the dealer in the United States, may protect himself by the guaranty of a domestic manufacturer, but what about the dealer who purchases from a foreign manufacturer? He is not protected by the insertion of the qualifying word "knowingly," and yet he is the man above all others who should have the protection carried by that word thrown around him. Why? We have laws under which the Department, so large that I do not know how fitly to characterize it in respect to almost everything that is going on in this country — the Agricultural Department — investigates many things and certifies as to the healthfulness of many things. The Treasury Department also has many functions of that sort. Now, I ask the Senator if it be not true that no imported food, liquor, or the third article mentioned here, can be released from the custody of the custom-houses until the Government officials have analyzed it, or a sample of it, and found it to conform to the law or to be free from poisonous ingredients, and so forth? That is true, is it not?

Mr. McCUMBER. That is the law as it stands today.

Mr. SPOONER. Very well. Now, Mr. President, every citizen of the United States has a right to assume that the men at tide water, at the ports of entry, paid by the United States to make examinations and analyses of these imported articles, have done their duty, and it is a travesty on law, on good administration, on decency, that a man who buys and sells, believing that the Government officials at the custom-houses have done their duty under their oaths, shall be held down under penalty of imprisonment or fine if they shall not have done their duty, while men who buy from domestic manufacturers are protected immediately by a guaranty.

So I said to my friend from Idaho that I thought the amplest justice to our people (for this bill is full of pitfalls for the unwary as almost any bill of the kind must be) required us to protect those who act in good faith as far as it is possible; and I suggest to my friend that as to the dealers who put upon the market articles imported which had already passed the scrutiny of the Government officials, he ought to insert the qualifying word "knowingly." I thought he agreed to that.

Mr. HEYBURN. Mr. President—

Mr. McCUMBER. I yield to the Senator from Idaho.

Mr. SPOONER. That is the only instance.

Mr. HEYBURN. I wish to call the attention of the Senator from Wisconsin to the fact that the bill as reported contains the word "knowingly," page 2, line 22, and the controversy the other day was simply as to how far that word was applicable to another provision of the bill.

Mr. SPOONER. I had not read the bill, and I asked the Senator whether it had been incorporated.

Mr. HEYBURN. It was in the bill as reported. It was merely a grammatical distinction.

Mr. SPOONER. So the Senator from North Dakota understands just what I meant by the insertion of the word "knowingly."

Mr. McCUMBER. I have no objection to the word "knowingly," as applied to those cases. I considered that the domestic retailer was sufficiently protected under the provisions of the guaranty, and the other was already in the bill.

Mr. SPOONER. It was not in the bill last winter.

Mr. McCUMBER. It is in this bill.

Mr. SPOONER. I asked the Senator from Idaho, who has charge of the bill, the other day whether it was in the bill now. He said it was, and I was satisfied; but some question arose as to whether it ought not to be again inserted in order to apply more fully to the case I am stating.

Mr. McCUMBER. I have no objection to its being inserted at that particular place, but my objection was urged against the insistence not only as I understood in the debate the other day, but as I know in the debate which took place at the close of the last session, that the word "knowingly" should be inserted as a protection against all the retailers.

There is a law against selling adulterated milk. No one ever heard of our insistence that the word "knowingly" should be inserted. If that were done, as I said, it would open the gate for the escape of almost everyone of these dealers. We have in our State, as I said, a prohibitory law against the sale of intoxicating liquors. To meet that law nearly all the great brewers have manufactured what they call "Pabst's malt" or somebody else's malt. A few bottles are taken to the saloons—where we have them in our state. I admit that we have them, but there are very few of them. Then immense quantities of beer, purely intoxicating liquors, are shipped to the same vendor; and, while he may have this malt upon his shelf, the great bulk of his sales, and practically all his sales, are nothing more than the ordinary beer that is brewed at those great breweries.

Now, when he is arrested, charged with the sale of these intoxicating liquors, he always falls back upon the proposition that he understood it was all this malt and he did not know he was selling any real beer whatever; he did not know that it was intoxicating.

We have our proposed law so framed that that excuse cannot be made, and I know of no reason, Mr. President, why you should open wide the gates for fraud of that character. If we use the word "knowingly" in all cases of that kind in our statutes against offenses of this character, then practically all the defendant would have to do would be to substitute the crime of perjury for the crime of which he was charged, and he would go scot-free.

The VICE PRESIDENT. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 529) to promote the national defense, to create a naval reserve, to establish Amer- [p. 1220] ican ocean mail lines to foreign markets, to promote commerce, and to provide revenue from tonnage.

Mr. MALLORY. How much longer does the Senator from North Dakota desire to speak?

Mr. McCUMBER. I shall not complete my remarks to-day, but I should like to spend about three minutes in one explanation, and then I will close.

Mr. MALLORY. Very well.

The VICE-PRESIDENT. Without objection, the unfinished business will be temporarily laid aside until the Senator from North Dakota concludes his remarks.

Mr. McCUMBER. Mr. President, the remark of the Senator from Wisconsin [Mr. SPOONER] a few moments ago was to the effect that this bill is full of pitfalls for the unwary. I wish to say candidly to the Senator from Wisconsin that I do not believe he could make or conceive of a bill that was intended to accomplish a certain object that is more carefully drawn to protect the innocent or unwary. Now, how is this done? In the first place, every offense must be tried by the court. How does it get to the court? The Secretary of Agriculture may make an examination of the chemical, he may make examination of the drugs and the foods and the liquors that are manufactured for interstate commerce. If he himself concludes that any food or any drug does not measure up to the standard that is required in these definitions — and they are standards based upon common sense and common judgment — he does not immediately direct the arrest of the manufacturers, but he is required to give them notice that in his opinion, and upon a chemical examination of their products, they do not comply with the law. A hearing is then given to the manufacturers and the testimony taken; and if the manufacturers themselves satisfy the Department that their products are pure, that they are wholesome, that they are not adulterated, that they are not misbranded, that is the end of it.

If they seriously differ, then the testimony is simply submitted to the United States district attorney, and there a second safeguard is thrown around it. The United States district attorney does not need to act even upon the advice of the Secretary of Agriculture, but he investigates the subject himself and determines in his own mind whether or not it is a case that ought to be prosecuted. If he finds and believes that in a court he can establish beyond any reasonable doubt that the manufacturers are guilty of the offense, he may then institute the proper proceeding. Then it has to go before the grand jury, and they again will have to act upon the same subject. Even then, if it be found that he is selling an unwholesome or adulterated article, he must still produce in court this little guaranty from the party from which he purchased, which would be a complete defense.

If anyone can possibly conceive of any method by which an innocent manufacturer or dealer may be more fully protected than is contained in the provisions of this bill, I certainly should like to hear from him.

[p. 1221]

PURE-FOOD BILL

The VICE-PRESIDENT. The Calendar is in order.

Mr. HEYBURN. I ask unanimous consent to call up the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill.

Mr. HEYBURN. I yield to the Senator from North Dakota [Mr. McCUMBER], who desires to submit some remarks.

Mr. McCUMBER. Mr. President, when I was last discussing this subject, the Senator from New Hampshire [Mr. GALLINGER], who I am sorry to see is not now present, referred to a certain publication in the National Druggist with reference to the action of the food commissioner of the State of Minnesota, and declared his hope that this bill was not so drawn that it would allow such offenses as had been committed in that State. He referred to the National Druggist as a magazine published, I would say, in the interest of patent medicines, etc., as a reputable publication. The Senator from Minnesota [Mr. NELSON] felt called upon to defend the action of the food commissioner of that State. I wish to say simply a word with reference to this publication and the influence it should have upon the Senate of the United States or the members of the Senate in the consideration of this most important bill.

I do not desire to challenge to any extent the good reputation of this particular publication. I prefer to leave every person to exercise his own judgment upon what is reputable and what is not reputable. It is apparent from the publication itself that it is the champion of wide-open adulterations and frauds in the matter of food and drug products; that it is the enemy of all good pure food and drug legislation; and, if I may judge from its advertisements, that it is a purveyor of all vile and fraudulent alleged remedies. One can not but be impressed with the truth of this if he will take up one by one the pages of advertising matter and then take up some of the investigations into those things, that are advertised as worthy of the consideration of the public, found in the public documents of the State of Massachusetts. I will place side by side this journal and the declarations made by the chemists of the State of Massachusetts, appointed or chosen for that purpose, and will let the Senate itself decide, or anyone else who is interested in pure-food legislation, which is the most reputable.

But that we may understand fully another force which is at work today against this character of legislation and at the same time understand the animus of this publication against all pure-food legislation, I desire to call attention to page 204 of the number for July, 1905, and we will understand from this the object of a certain organization which is now in the city and whose efforts are to defeat the legislation which we are seeking to have enacted. On page 204 I find this heading: "How to fight pure-food legislation." It goes on to say:

> About fifty representatives of food products met at the Waldorf Hotel in New York a week or two ago and formed a National Food Manufacturers' Association. The object of the association, as set forth in the call that was issued, is to obtain the cooperation of the various food and drug industries of the country "in an endeavor to secure a national food law at the next Congress, which law shall be one that will protect the public from unwholesome and adulterated foods and drugs, and at the same time conserve the rights and legitimate interests of the food and drug industries of the United States."

That is said to be the object of this organization.

> The necessity for the organization was summed up by Mr. Thomas E. Lannen, of Chicago, who said:
>
> "There will be a food law enacted at the next Congress. Of that there can be no doubt. What we must decide is, shall it be a food law of the manufacturers or of the food commissioners?"

Now, knowing the constituent elements of that association, reduced to simple English it means this: Will it be such legislation as the States themselves have seen fit to adopt in declaring that certain adulterated and misbranded goods shall not be sold within the borders of the State, or will it be such legislation as will enable the manufacturers of jellies and preserves and other such products to use aniline dyes, to use coal-tar products, in the preservation of their particular products, and also to substitute any other food product for the product which is advertised by them as the particular thing which they are selling? That to me, Mr. President, is what the real issue is in a nutshell.

Now, how is this to be accomplished? By certain amendments which this organization is to supply Members of Congress with from time to time and also by a separate bill if possible.

While the National Druggist agrees with them in much of what they are doing, so far as their attempt to prevent any legislation is concerned, it goes on to say:

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> In spite of all this, however, we believe that it is the part of wisdom to fight the proposed legislation on principle, to make no compromise whatever with the scamps who are behind it, and to refuse to treat with them on any kind of terms.

Speaking then of this Congress, it says:

> So far, their opposition has been effectual in

> **forestalling such legislation altogether, and the grafters who have been endeavoring to obtain it will probably agree to any measure that may be proposed if it will secure the cooperation of those who have hitherto stood in the way and foiled their designs.**

Again it says:

> **Therefore, as we have said, it seems to us that the wisest course is to oppose all laws which have for their aim the regulation of private enterprise, under whatever pretext they may be urged.**

And again:

> There is no demand whatever for such legislation from the general public, who are supposed to be suffering so much from impure and adulterated foods and drugs. Then why should Congress concern itself with an evil about which those whom it is supposed to affect so injuriously make no complaint?

Yet it is said that this is a reputable magazine, a magazine which declares that so long as the people submit to crime and injustice, no matter how apparent it may be, neither Congress nor any other legislative body should interfere with them in the slightest degree in perpetrating such injustice.

This journal also attacks all pure-food officials as criminal grafters. I call attention to the National Druggist of July, 1905, page 205.

* * * * *

The Senator himself, of course, says that he sees no particular dangers from the food products that are generally in use; and yet, Mr. President, one can not look over the United States, viewing the great army of physicians, viewing the hundreds of thousands of drug dispensaries, viewing the great number of advertisements in every magazine and in every paper in the United States, declaring the wonderful medicinal qualities of an innumerable character and kind of cure-alls, without becoming convinced that the health of the people themselves is a material thing that should be looked after by legislators.

Mr. President, we are coming more and more to understand that our health depends more upon the character of food we consume than upon the medicines that are given to allay and destroy diseases. We are coming more and more to understand that a proper diet, varied to meet the conditions of each individual, is not only the greatest panacea for, but also the greatest preventive against the evils with which humanity seems to be afflicted.

If that be true, I insist that there is a moral duty resting upon the Government to insure, so far as it is possible to do it, the health and comfort of every citizen constituting the public. How may it do this? It can not prescribe a dietary course for every individual. It can not declare what this person or that person shall consume. But, Mr. President, what it can do, and what it morally ought to do, is this: It ought to protect the individual against all character of imposition and fraud, so that entering into the markets he may purchase those things without fear which he knows to be conducive to his health and comfort, and above all that he may avoid those things which he knows to be detrimental.

But, Mr. President, at this age no man can possibly prepare his own food or his own drugs. He is therefore at the mercy of his fellow-men. His life is threatened at every point by the greed and the avarice of the manufacturers of drugs and many kinds of food products.

Mr. President, has food adulteration and drug adulteration reached such proportions in the United States that it demands national consideration and a national attempt to eradicate it? The very fact that nearly every State in the Union has passed pure-food laws, the very fact that their commissioners are working night and day to check the great evil of misbranded and adulterated articles of food which are pouring over the border lines of the States, and the fact that organizations are formed everywhere in the United States to check this great evil, seem to be proof conclusive not only of its existence but also of its danger.

Mr. President, several years ago the Secretary of Agriculture desired to make an estimate of the proportion of adulterated and misbranded foods that were sold in the United States. He called to his aid the food commissioners of the several States having food laws; and, in addition to his own investigation, he showed as a result that about 30 per cent in value of all the food products in the United States were either adulterated or misbranded. In order to be conservative, he cut that in two; he brought it down to 15 per cent, and even at those figures the amount of adulterated and misbranded articles which went into commerce every year was $1,175,000,000. Today it is safely estimated that it is more than $3,000,000,000 per annum. Just think of it! The American people pay out every year for fraudulent and for adulterated articles of food a sum sufficient to pay the entire expenses of the civil war; they pay out enough every year, Mr. President, to pay the national debt three times over, and all for these adulterated and misbranded articles.

Now, if we will bear in mind that from 50 to 60 per cent of our food products consists of flour, potatoes, fresh vegetables, eggs, and a little fresh meat, we will see that of all the remaining many hundreds of articles of food the greater proportion of them are either adulterated or misbranded articles.

I referred heretofore, Mr. President, to the report of the commissioner of food of my own State. He made an examination of hams and other meats, which were imported into the State, and found that every ham or rib—which had been imported—which was examined contained from 25 to 45 grains of boracic acid. I have stated before that when given for medicinal purposes from five to ten grains of that drug constitute a daily dose. He examined the potted chicken and potted turkey put up in cans and shipped into the several States, and he could not find a single can in the entire State which contained the slightest amount of either chicken or turkey. As I have said before, it may be that calf neck and pig jaw are just as good; that they are just as wholesome as chicken or turkey; but what I insist upon is that it is not what the purchaser thinks he is buying, and that he is entitled to have for his good dollar good meats that he thinks he is purchasing, and not counterfeits. That is all that those who stand by this proposed pure-food law insist shall be done.

Let me give another case, one which I cited before, and it brings us back to this question of food. Perhaps one of [p. 1415] the most common of all the dangerous diseases in this country is diabetes. We know that physicians prescribe for this ailment a diet—a diet of gluten flour. A physician prescribes that for his patient. The patient goes to any of the stores in the city of Washington or in any of the great cities and calls for gluten flour. He gets a package of 5 or 10 pounds, which is marked "gluten flour." He takes that, and he follows out the prescription of his physician. In a short time he dies. The physician does not understand why his prescription has not had better results. He examines the contents of this package which is marked "gluten flour," and finds that there is no gluten flour whatever in it. Is this true? Doctor Bigelow went around the city of Washington a short time ago and called at thirteen different stores to purchase thirteen packages of gluten flour, and out of the entire thirteen but two or three contained gluten flour at all. All the remainder were frauds.

If I take the reports of Massachusetts—as good a State as that is, and where they attempt to enforce their laws, as I have shown here already this morning—I find that there is scarcely a drug in the market that is not adulerated, scarcely a can of fruit or a can of preserves or canned goods of any kind where a large proportion of them is not adulterated. Mr. President, it seems to me that this is sufficiently serious to challenge the attention of the American people.

Now, let me give an illustration of why we need national legislation. To do that I borrow from a statement made by one of the pure-food commissioners, or, rather, the secretary of the State of Kentucky. He states that in March, 1901, while standing in front of a grocery store in Morgansville, Ky., a woman and her litle child came in with a basket and purchased a number of articles of food for their table, consisting of lard, of sirup, of jelly, of sausages. The price amounted to $1.80. She gave the grocer all she had—$1.57—and went away indebted to him 23 cents. Mr. Allen immediately purchased a quantity of each of those articles and analyzed them. He found the sirup was 70 per cent glucose, that the jelly contained nearly everything but fruit juice and was colored with coal-tar dye, the sausage contained an antiseptic and the lard consisted of beef stearin and cotton-seed oil mixed. Had she gone into the market and bought those articles for what they were, at the very highest retail prices they would not have cost her over 90 cents, and she would have gone away with 67 cents in her pocket, instead of being indebted to the grocer 23 cents; and this, Mr. President, independent of the fraud that was perpetrated upon her, independent of the coal-tar dyes, which her children were compelled unconsciously to consume.

I know our opponents say, "You have got pure-food laws in about two-thirds of the States and you have got commissioners to enforce them; why, then, do they not exterminate these evils?" That can be easily explained by taking the very case which has been mentioned. The lard which was purchased from the retailer in Kentucky was manufactured in St. Louis, the jelly was manufactured in Indiana, the sirup was manufactured in Ohio, the sausage was manufactured in Chicago. Every one of these articles was manufactured in a State outside of the State of their consumption. So, if you got after any man in the State of Kentucky, you would get after the innocent retailer. So it is the manufacturer that must be reached.

I have already explained that in the construction of the interstate-commerce law it has been declared that the term "commerce" not only covers an article in its transit from one State to another, but it protects and shields that article until it is sold in original packages in the State of its consumption; and then if you can find it you can punish the innocent retail dealer for selling it, even if he was innocent of knowledge of its impurity.

It will be seen, therefore, Mr. President, that the root of the evil is planted in that territory over which the State has no control and over which Congress has complete control—that is, the jurisdiction over interstate commerce.

There is another reason which I desire to urge here, and that is the very moral reason that was suggested by the Senator from New Hampshire [Mr. GALLINGER] the other day. I want to say, Mr. President, that you can not for years surround a people with crime and deceit and imposition on every side without in time unconsciously affecting the moral character of the people. Constant association with crime and deceit soon dulls our senses of offenses of that character. Mr. President, for that reason alone I think it becomes a moral duty for the nation itself to take hold of this question. Why? Does it not create an absolute disrespect for all law when we severely punish a person for a breach of what is right in one respect while on the other hand we do not attempt in the slightest degree to punish persons guilty of other offenses? What right, Mr. President, has the Government to send me to the penitentiary for five or ten years for trading, we will say, a silver dollar which is one-half lead to a vender of sirup who gives me "pure maple sirup" which consists almost entirely of glucose, with a little of what is called "maple flavoring?" If I should be punished, Mr. President, by imprisonment of ten years for passing a dollar which was 50 per cent good, then I would ask in reason why a man should not be punished twice the length of time for giving me something which was absolutely a fraud from beginning to end?

The American people have submitted to this. They generally submit to fraud and imposition for a great while before they awake to it. They have been so used to being defrauded in what they purchase in drugs and foods that they for years have thought there was no possible remedy, and they would take it as a matter of course, but they are waking up to the imposition. The fact that the reputable magazines in the country and the reputable newspapers in the country are insisting upon some character of action seems to me to be the strongest proof that the people have made up their minds that they will no longer submit to this imposition.

Mr. President, that is all I desire to say today upon the general features of the bill. We desire to get a bill through here that every Senator can feel will bring about the very best results with the least possible injury to any person or to any business; but if we stand back and say that we will not pass a bill that interferes with fraudulent businesses of any kind, then we shall never in the world get any bill through.

As to the association to which I have referred, I can not but feel that while it sails under a banner which proclaims its desire to get a good pure-food law through Congress, the real intent and purpose, or at least the effect of its action, would be to prevent pure-food legislation of any character whatever. I can cite one example, and that is an amendment which says that they shall file the ingredients of the composition which they sell to the public with the Secretary of Commerce and Labor, and that the secrecy of that shall be entirely inviolate. Therefore they can call their goods anything they may have a mind to, under a trade name, and that would prevent any State official from in any way interfering with them in the first instance and preventing their sale in the State. Under an amendment of that kind they can simply use all the coal-tar dyes they desire; they can take a little timothy seed, they can take a pail of glucose, they can color it to represent the strawberry color, give it a little flavoring, throw in timothy seed to give it a little appearance of strawberry, a little clover seed if they want to make raspberry jelly out of it, and if they file the composition with the Secretary of Commerce and Labor no one can question their right to import that into any State.

This bill seeks not, Mr. President, to interfere with any legitimate business, but it does seek to protect the public, and we sincerely hope that if there is a prospect now of bringing this matter to a vote before the Senate action may be taken, and that the careful and conscientious attention of every Senator who desires to get a good pure-food law through Congress may be directed to that end.

Mr. HEYBURN. Some days ago,

Mr. President, I gave notice that I would at an early day ask that a time be fixed to vote upon this bill. This morning I ask unanimous consent that the bill may be taken up for the consideration of the amendments of the bill, and that that consideration shall continue on the 2d day of February until the bill is disposed of.

The VICE-PRESIDENT. The Senator from Idaho asks unanimous consent that the bill before the Senate, together with the amendments then pending, may be voted upon on the 2d day of February next? Is there objection?

Mr. LODGE. I have no desire personally to make any objection to fixing a time that is agreebale to other Senators; but the Senator from Maine [Mr. HALE], who is detained at home by illness, before he left asked me to say that he was very much interested in this bill, and that he hoped no time would be fixed until he could have an opportunity to come back and further examine and discuss the bill. I personally have no objection to fixing a time to vote, but, in his absence, I hope the Senator will not ask that a day be fixed now, and that he will communicate with the Senator from Maine before he does ask it.

Mr. HEYBURN. Mr. President, I had not observed, when I asked for unanimous consent, that the Senator from Maine was not present. I think it might be said that I had an understanding with the Senator from Maine that I would not ask in his absence that a time be fixed for a vote on the bill. I will withhold the request for unanimous consent at this time.

Mr. SPOONER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Wisconsin?

Mr. HEYBURN. Does the Senator desire to speak on the pending bill?

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Mr. SPOONER. I do desire to speak on the bill, but unless the Senator desires to proceed with its discussion, I thought I would venture to address the Senate briefly on another subject.

Mr. HEYBURN. If the Senator will indulge me a few moments, then I will yield.

Mr. SPOONER. I can as well speak on this bill as on any other.

Mr. HEYBURN. The bill is before the Senate, and I do not want to have it laid aside for a few moments yet.

Mr. President, as the consideration of this bill proceeds new objections are raised from day to day by different Senators—of course in good faith—which it seems wise to consider without waiting for the final discussion upon the bill.

It has been suggested that this proposed legislation partook too much of the paternal in character and that it was not necessarily one of the functions of Congress to determine what may be designated as the small details of the public interest as it affects private individuals. I believe that one of the primary and most sacred duties of a legislative body governing and making laws for a country such as ours is the consideration of private interests relating to the welfare of the individual. Of course, it seems to be more of a legislative function upon casual glance to deal with international affairs, with great financial problems, with high-sounding legislative terms, but we are here primarily, Mr. President, for the individual people.

The word "government" is continually misapplied. The people are the government. The people govern themselves. Sometimes Congress conceives the idea that Congressmen govern the people; sometimes the Executive would seem, from the acts of the Executives —and I do not refer especially to the present head of the executive department of the Government—but, I repeat, sometimes the executive department of the Government would seem to consider that it governed the people. Sometimes it might appear that the other coordinate branch of the Government, the judiciary, thought it governed the people. Neither of these coordinate branches of the Government governs the people. They are only the voice that speaks and the hand that writes the law. It is the people, speaking through these branches of the Government, that govern the people themselves, and when the voice of the people is raised in behalf of a measure of legislation, we can not, as the authorized representatives of the people, ignore that voice.

Now, I appeal to Senators, has there ever been in the history of this country a more universal demand for action upon the part of Congress than the demand that has gone up from one end of the country to the other in regard to legislation upon the pure-food question? It affects the people more than the river and harbor bill; it affects the people more than the public land question; it affects the people more than the relations between this country and some foreign country, because, unless the people are safeguarded in their individual rights, they care but little for the questions which are sometimes considered to be of larger importance. So I feel this morning like invoking that earnest, prompt consideration and determina- of this question which befits the dealing with a question so near to the people as is this.

Mr. President, I have not gone into details as to the specfic articles that are foisted upon the public because of the want of protection at the hands of the National Government. The Senator from North Dakota [Mr. MCCUMBER] has given a very excellent exposition of the evils that this legislation is sought to remedy. I class the man who foists a bogus or an adulterated drug or medicine upon the market with the man who poisons the spring out of which the unknown public drinks. He does not know who his victim is going to be when he does it. He manufactures it for individual gain and selfishness; but when the physician, standing at the bedside of the sick, diagnosing the case, knowing from his education in the science of medicine that a certain drug will bring relief, writes a prescription, with instructions that that certain drug be procured, contemplating it in its purity, measuring its effect because of his knowledge of it in a pure state, and that prescription is taken to the drug store, and, instead of being compounded of the drugs that the physician had in mind when he wrote the prescription, it is compounded of a substitute, either an absolute fraud or a deleterious composition that will produce exactly the opposite result from that contemplated by the physician when he wrote the prescription, what is the effect? The medicine is taken to the bedside of the helpless sick. It is administered by the nurse in the hope that it may accomplish the result which the physician had in mind; but, on the contrary, because of the fact that it is a fraudulent substitute for the real panacea for the ill, the patient dies. Can you imagine a condition of affairs crying louder for a remedy than that?

Aside from the question of fraud from a financial standpoint, aside from the question of substituting a medicine that, perhaps, does not cost one-tenth what the real substance would cost, aside from the fraud that is based upon the gain in price between the real and the bogus article, the effect upon human life is as serious a question as could be presented in the consideration of a public measure asking for relief through legislation at the hands of Congress. Is that too small a question for Congress to deal with?

Only last Sunday I picked up one of the great journals of this country that ranks among the very best, and I found a very excellent little editorial commending pure-food legislation, commending the regulation and restraint of these bogus articles, and then in the same paper I counted sixty-two patent-medicine advertisements, and advertisements of the worst frauds that could be imagined. I appeal to the newspaper fraternity of the country to assist us in a real and substantial manner in settling this question.

The Post-Office Department could exclude from the mails these papers that carry upon their pages the tempting inducements to those who have real or imaginary ills to invest their money in these poisonous, deleterious, and fraudulent substances. That is one way to reach them.

Congress alone can make effective the laws of the several States prohibiting the manufacture or sale of this class of articles. The States are helpless under the law. Under the Constitution, as it has been construed by the Supreme Court of the United States, these goods may go from one State to another in unbroken packages, and it is not until the package is broken that the jurisdiction of the State attaches. The State laws are helpless. There is a cry from every State in the Union—I think I may say that I have within my possession a demand from nearly every State in the Union—that the Congress of the United States should supplement their legislation and afford relief against the impositions that come from one State to another.

Seldom are these forbidden articles sold in the State of their manufacture. Seldom do they bring themselves within the law of the State which would regulate them. What higher duty can Congress perform than that of assisting the State governments in their local self-government in a matter which affects the people so closely?

This principle of self-government to which I have referred begins in the home. It begins with the individual, and it rises through the home and the local community and the various political governments until it reaches here, and we are the last arbiter and should be the first to afford relief.

Mr. President, I do not intend unduly to abbreviate the consideration of this measure. So long as any Senator desires to speak upon it, I am more than content that is should rest in the consideration of this body; but when the hour arrives that it is evident that no Senator desires to speak further upon it, which is evidence that they have no further consideration to add to the wisdom of this body in disposing of it, I do hope the Senate will promptly take a vote upon it, and say to the people that we have time to attend to their wants, we are here to aid not only the individuals but the States, representing the individuals, which can legislate for themselves only within a limited scope. I hope the Senate will act promptly upon this matter, and I say now that at a very early day I shall again ask the Senate to fix a time for the final consideration and determination of this question.

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PURE-FOOD BILL

Mr. HEYBURN. Mr. President, I should like at this time to call the attention of the Senate to the consideration of Senate bill 88. I ask that it be laid before the Senate.

The VICE-PRESIDENT. The Senator from Idaho asks that Senate bill 88, the title of which will be stated, be now laid before the Senate.

The SECRETARY. A bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Mr. HEYBURN. Mr. President, I shall not undertake again to present primarily the questions involved in Senate bill 88, but there have been several amendments proposed to the bill, and the time for its final determination being near at hand, it seems to me that, in the interest of avoiding any haste in the consideration or disposition of those amendments, it would be well to take them up for such consideration as may be given them during the remainder of the morning hour.

Mr. President, there was some confusion when I rose to ask unanimous consent for the consideration of the bill (S. 88) for preventing the manufacture, sale, or transportation of [p. 2643] adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes, and I do not know that the record is plain in that regard. Therefore I ask that the bill may be formally taken up.

The VICE-PRESIDENT. The Senator from Idaho asks unanimous consent for the present consideration of the bill named by him. Is there objection.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill.

Mr. HEYBURN. Now, Mr. President, I will resume.

It is my purpose this morning to take up for brief consideration some of the amendments that have been suggested, in order that any Senator who has proposed an amendment or who desires to propose one may, if he so choose, have it taken up for consideration at this time in order that the consideration of amendments may not be crowded into the last hours of the consideration of this measure.

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Ohio?

Mr. HEYBURN. Certainly.

Mr. FORAKER. If it will not interrupt the Senator—and I presume it will not, for I understand he desires to know what amendments are to be offered to the bill—I will say that I have been requested by a great many of my constituents to offer an amendment which I will send to the desk in order that it may be read.

The VICE-PRESIDENT. The amendment intended to be proposed by the Senator from Ohio will be stated.

Mr. LODGE. Mr. President, I rise merely to make an inquiry. Is not the amendment that I offered to be bill on page 8 now the pending amendment?

The VICE-PRESIDENT. The Chair understands that it is.

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Mr. LODGE. I see the language as the Chair quotes it, but certainly the understanding was that that day was to be devoted to the bill, to the discussion of the bill and amendments, and that we were to vote upon it before adjournment. As it is worded, the strict letter of the agreement would require that we begin to vote immediately after the routine morning business.

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Mr. HOPKINS. I desire to ask if the construction of the unanimous-consent agreement would not be that after the morning hour the bill is to be taken up, and we are to proceed to discuss the amendments and vote on them, and there is no limitation as to when the final vote shall be taken? Will not that continue until there is full debate on each amendment, and then the vote will come on the bill itself——

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Mr. MONEY. Bills of this character, as I remarked a while ago, have been going to the Committee on Agriculture. Since this new Department was organized they have gone to the Committee on Manufactures, operating in connection with that Department. There is no necessity that I can see why this bill should go to the Committee on Manufactures unless the whole subject is transferred to that Department. I know that the way this matter has been conducted heretofore has been that the chemist of the Agriculture Department, in conjunction with those appointed by the Secretary to assist him, have never made, as far as I could ever learn, any quantitative analysis of foods, drinks, or medicines or anything else. They have made a qualitative analysis, and under that a great many evils have been done and great losses have been incurred by manufacturers who were perfectly honest in the preparation of their food products.

For instance, in undertaking to analyze a food product, the chemist desires naturally to find whether there is anything whatever of a trace of certain articles usually used in the preparation of food products and in their preservation—not so much in their preparation as in their preservation—boracic acid, salicylic acid, sulphurous acid—not sulphuric acid—and a large number of others which have been used simply in the quantity necessary to preserve, but not in a quantity generally that would injure anybody. Whenever it is used in that quantity it becomes the province of the chemist to determine it, but no such attempt has been made up to this time by the Chemist of the Agriculture Department, so far as I have learned—that is, by quantitative analysis to find out what was the proportion of the preserving article to the whole product.

For instance, you can not, so I am informed, put up meat, especially sausages and articles of that kind, without a small trace of boracic acid; and my substitute fixes the quantity beyond which they can not go without incurring the penalties of the law, which are fine and imprisonment. It permits them to use a very small percentage of preservative to the whole product, a percentage of which can do no harm to anybody taken in the quantity that is used for the preservation.

Now, a case in point happened where a carload of sausages went to Pennsylvania from Chicago. An analysis was made, and it was found that there was a trace of boracic acid. The Pennsylvania authorities said, "Boracic acid is a poison." Therefore it was stamped "poison," and that carload was sent back to the shipper at his expense. Profiting by that experience, a rival in business sent a carload of sausages not preserved by boracic acid or anything else and it was rejected because it contained ptomaine poison. Ptomaine, you know, is an alkaloid—it is a cadavaric alkaloid. It is a product of the decomposition of meat and also in one sense of particles of the structure of the human frame. So the one carload was condemned for containing boracic acid (and if a man had eaten the whole carload of sausage the boracic acid would not have hurt him) and the other carload was rejected because the manufacturer could not preserve his meat without subjecting him to the penalty of the Pennsylvania law and his meat was condemned because it contained ptomaine. Here is the injury inflicted, with no attempt, however, to determine how much could be taken with impunity or with safety.

My bill proposes to limit the amount. I say "my bill;" I introduced it at the request of these gentlemen. Here is a proportion, a percentage, that can be used of certain preservatives, and the best chemists in the world say that they are not injurious.

There is also a method by which it can be decided whether or not the manufacturer or producer or deliverer of these goods has done anything which would be deleterious to the general health. In the first place, the officers of the law will take three samples, which he is authorized to purchase. In that matter it follows the laws of pretty nearly every State in the Union as well as those of Great Britain. Massachusetts and other States have such a law. Three samples shall be taken, one of which shall be analyzed by the chemist, not an agricultural chemist, but a hygienic chemist, the chemist in the division of chemistry of the hygienic laboratory of the Public Health and Marine-Hospital Service, whose business it is to analyze things concerning health and life, and not an agricultural chemist merely, nor an analytical chemist merely. Before any action can be taken against a man the analysis must be shown him. He is permitted then by his own chemist to make an analysis, and then he can go to the court and appeal, and there he has his hearing; and the third package is there for analysis, if it is deemed necessary by the court, the reports being submitted from the two other chemists — the Government chemist and the chemist of the manufacturer or the preparer of these foods. So there is no danger of a man's business being broken up before he has had a hearing, as there was under the original bill, which I am glad to see has been amended in that particular.

It is not necessary to go into any general statement about the desirability of something being done. The only thing is to do it so as to protect the rights of everybody. Heretofore there has been an indifference manifested as to proprietary drugs, medicines, food products, etc.

The Senator from Idaho objected that there was nothing here that mentional patent medicines. I use this language, "Drugs, medicines, etc., according to the standard of the National Pharmacopœia and the United States Formulary." They are the authorities to fix standards in this country. I do not know of any other, and I do not presume anybody else knows of any other. The standards are to be so fixed. We must go to them to learn exactly what is pure and what is impure. You can not expect the proprietor of a medicine that is proprietary—that means an exclusive use and monopoly, a patent, etc.—to put on a label, tag, or anything else that is going to disclose the secret of the composition, in which he is secured by the patent laws. Those laws do not simply grant a monopoly, but, to use the language of the Constitution, they are to secure the right of his invention. It is the granting of a monopoly to secure the right which already inheres in the discovery, or invention, or whatever it is, that he may have invented, discovered, or compounded, and is not in any strict sense a monopoly; but the exclusive right is secured for the purpose of encouraging invention.

There is another thing in the bill that I have offered as a substitute. Whenever there is a well-known article of food which has been used we admit it as a lawful component part of a preparation under its trade-mark or name. I have in mind right now Lea & Perrin's Worcestershire sauce, which has a world-wide use and reputation, and has had for a hundred years or more. That, under some ruling of your commisssion, whatever it may be in future, has been rejected, because the ingredients were not printed in their proportion upon the labels, or something of that sort. Some of the States require these to be printed; some do not. Some require that in the preparation of jelly the word "jelly" must be used; others do not. So what is good in one State is bad in another. A manufacturer sending his goods from one State to another without knowing what States they are going to or what sort of a label is to be put on, finds that what is perfectly acceptable to one State will be objectionable to the next State.

Mr. HOPKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Mississippi yield to the Senator from Illinois?

Mr. MONEY. Certainly.

Mr. HOPKINS. The Senator was speaking about having a formula for the use of boracic acid in the preservation of meats. I understand his bill provides for a certain percentage.

Mr. MONEY. Yes; no formula, but

simply a percentage.

Mr. HOPKINS. I should like to hear from the Senator on that point, as to how that is superior to the bill under consideration. As I understand the pending bill, it does not prohibit the use of boracic acid in the preservation of meats, but leaves it for the court to determine on complaint as to whether a larger quantity than is healthful to be used is used or not.

Mr. MONEY. That, as I understand, is the amendment which has been offered. It was not in the original bill, and I have been addressing myself to that.

Mr. McCUMBER. I do not understand the Senator. The original bill simply provides that a person may use anything. He may use strychnine, if he wants, as a preservative; but the [p. 2654] courts must determine whether or not the quantity that is used is injurious to health; nothing more and nothing less. That has been in the bill which I reported time and again, and it has not been changed. It is in the bill pending today.

Mr. HOPKINS. With that explanation I should like to hear from the Senator from Mississippi on the point as to whether the formula provided by him is better than the bill as presented by the committee.

Mr. MONEY. There is no formula provided. It is simply a per centum. That would be determined by the best chemists who have been engaged in the chemical work of these great manufactories.

Mr. McCUMBER. If the Senator will allow me——

Mr. HOPKINS. Is it not better not to have that in the bill at all, because under the present bill, as I understand from the reading of it, and as explained by the Senator from North Dakota, that amount of boracic acid can be used without subjecting the user of it to the penalties provided in the bill?

Mr. MONEY. Well, the advantage of mine is that the manufacturer knows exactly what to put in and is not subject to any inquiry by the courts.

Mr. HOPKINS. But the trouble with that, to my mind, is that if it should be found that a fraction over that amount is used, then the person becomes liable to the fines and penalties of the bill.

Mr. MONEY. Certainly.

Mr. HOPKINS. It might be that upon chemical analysis the proportion that was used might not be deleterious to health, and under the present bill it would not subject the user to the penalties of the bill.

Mr. SPOONER. Then, if the Senator will pardon me—

Mr. MONEY. Certainly.

Mr. SPOONER. Will we not have different standards applied in different parts of the country—

Mr. MONEY. Of course.

Mr. SPOONER. Whenever the Federal courts happen to become involved in a trial of the question?

Mr. HOPKINS. I wish to ask the Senator if we have experienced chemists who will be called upon on trial to determine it, and they say that it is not deleterious to health, is that any objection?

Mr. MONEY. I will answer the Senator by saying these cases may be tried in any number of courts and testimony may be given by any number of chemists. According to my opinion, the manufacturer has his chemical analysis and the Department can have the analysis of the Division of Hygienic Chemistry here, the Bureau of Quarantine and Public Health, and then the court can have an analysis if necessary. But here is a standard fixed, and the manufacturer knows that if he goes beyond a limit he has made himself liable to investigation and to the branding of his goods in a way which will destroy his trade. He does not have to wait until he goes before a court under arrest charged with a penal offense and subject to fine and imprisonment; but when he is preparing his goods he knows that if he puts in more than one-tenth percent of one or one-half percent of another, and so on, that very fact has carried him beyond the true line and he is subject to these penalties.

Mr. McCUMBER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Mississippi yield to the Senator from North Dakota?

Mr. MONEY. Certainly.

Mr. McCUMBER. Then, as I understand the Senator, he would have Congress fix the standard. The committee thought it best not to allow even the Secretary of Agriculture or his corps of chemists to fix the standard.

Mr. MONEY. I think myself it is better that they should not.

Mr. McCUMBER. They did not think it safe for any man or set of men to fix a standard, and therefore they have eliminated any provision that would indicate that any person might fix a standard. Under the bill as it is now reported there is no standard except the standard the court and jury shall determine. Suppose the court and jury should determine that twice the amount of boracic acid would not be injurious, ought the person then to be convicted for using it, even though it was greater than the amount that is stated in the Senator's amendment? I do not believe there is a Senator here who knows what should be a standard, but we can all agree that the courts shall determine with a jury what is injurious to health when used in large quantities.

Right here, if the Senator will allow me, I would refer to the statement made by the Senator from Wisconsin. We do not propose to say what percentage of alcohol there shall be in beer, for instance, to determine its intoxicating qualities, and yet in every State—

Mr. MONEY. You would be wise if you did.

Mr. McCUMBER. In every State which has a prohibition law or in every county where it may not be prohibited in the whole State, the question is submitted to the court and the jury whether or not the particular ingredient which was sold was intoxicating or whether it was not. Of course each jury might find a different standard. That is true in almost every matter under the criminal law where it is not fixed absolutely by the statute itself. It would be impossible for us, it seems to me, who know nothing about these chemicals, to fix a standard; it would be even worse than giving it to the Secretary of Agriculture.

Mr. MONEY. Of course I listen with pleasure always to the deliberate judgment of the Senator, but I do not understand yet how a jury is any more competent to tell how much boracic acid or sulphuric acid or any other acid shall go into the composition for the public use than Congress is, with its unlimited means of getting information

Mr. McCUMBER. I will answer the Senator.

Mr. MONEY. One moment. At last the jury must depend upon the chemist; the court must depend upon the chemist; and the provision makes three chemists testify as to the quality of the goods, whatever it may be. By chemical processes it has been definitely ascertained that the amounts named in the substitute bill, or they would never have been named in it, were not injurious to health, but preservative of the food that was offered to the public.

It is a fact that it is the qualitative analysis that has governed the practice of the Department up to this date. We know that in one of the States, and I believe, if I am not mistaken in the State of the Senator who is the sponsor of this bill, the commissioner there declared that canned fruit from California had a trace of boracic acid and he condemned it. The firm that packed the goods declared that they never had put boracic acid in it, and his reply was that he did not care whether they had put it or whether God Almighty had put it in, it had boracic acid in it, and boracic acid was a poison, and he did not want it, and therefore he condemned the whole business.

As a matter of fact, it is pretty well known, I believe, to everybody that when you get away beyond the Mississippi River in what is called the "alkali country," and to the Pacific coast, all the fruit, notably apples, have a large trace of boracic acid; and in the preparation of apples, in the main, as in making jellies or anything of that sort, one may always find a trace of boracic acid. There was a lot of goods absolutely pure and free, with not enough boracic acid to hurt anything, just what nature itself had placed there and, according to the Senator from Idaho, nature never put anything in the wrong place, and yet they were condemned.

Now, it is intended to avoid these things and to enable the manufacturer plainly to see his duty, not to violate the law, and at the same time to put in a sufficient quantity of these condemned substances, as they ought to be, to preserve his meats.

Mr. McCUMBER. May I ask the Senator a question right there?

Mr. MONEY. Certainly.

Mr. McCUMBER. The Senator's opening statement was that his bill would not interfere with the police power of the State.

Mr. MONEY. I say that yet.

Mr. McCUMBER. He said it was carefully guarded for that purpose. Now, as a matter of fact, unless my ability of construction is entirely wanting, that is exactly what it does do and what the Senator's argument leads to. Take the action of the State chemist of the State of North Dakota. North Dakota may have a law that no goods containing boracic acid shall be sold in that State. Now, the Senator's bill is aimed against that law, and provides that if it has not to exceed one-half of 1 percent it may be sold in that State. The effect of such a law is directly in opposition and infringes upon the laws of the State itself.

There is scarcely a State in the Union that has not got a positive law against the use of any one of the preservatives that are mentioned here. It is clear to me that the object of the Senator's bill is to override those State laws which prohibit the use of those articles and to allow them to go in.

I want to call the Senator's attention to the fact that there are nearly seven pages out of the whole number of pages of his amendment directed simply to the matter how you may obtain samples, and it so guards the use of the samples that no one on earth could ever get into court with one of those samples. You apply a new rule for the courts in the trial and determination of the matter.

The Senator finds fault with any standard that a jury may fix. The jury will have the chemist before them. The chemist will be before the court. The chemist will examine those particular

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articles. The chemist can be cross-examined before a court, which he can not be before a Department. So it throws every possible safeguard around the man who is accused, and he must be convicted by evidence that will establish his guilt beyond a reasonable doubt. Now, I can not imagine how he could be more safely guarded than by a provision of that character.

Mr. MONEY. Mr. President, the Senator floated off on the tide of his own talk and got away from his original proposition entirely, which was that according to his interpretation of the Constitution this infringes upon the State law, and then he adduced the instances. It is perfectly clear to my mind that it does not, just as clear as obviously the contrary is clear to the very clear mind, I will say, of the Senator from North Dakota. This applies only to shippers in original packages. The tag or label or brand is plain; it is easily discerned; it is fixed to each one of them; and under the interstate-commerce law and under the decision of the Supreme Court of the United States that original unbroken package, perfectly within the control of Congress and the National Government, can go anywhere where the Constitution prevails. When it gets into the State, if it is contrary to the State law, then when that package is broken the State authorities seize upon the contents of that original package broken, and then they punish the men who infringe the State law. If they can follow the tag back to the shipper or the deliverer of the original package and show that he has violated the national law, for instance, taking either one of these bills, then it goes to the court and he is punished.

I want to say to the Senator, what he seems to have overlooked, that here comes in the chemist, whose business it is to consider questions affecting life and health—the chemist of the division of hygiene in this bureau of public health. He is the officer to whom it comes first. Then a package goes to the manufacturer and he can employ his chemist. Both these analyses can be produced before the jury; and in addition a third package, according to my bill, is reserved for the court chemist — anyone who may be selected by the court — so the three can be compared, and the jury will have the benefit of all that.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Mississippi yield to the Senator from Idaho?

Mr. MONEY. Certainly.

Mr. HEYBURN. I wish to suggest to the Senator that a serious objection to the fourth provision, on page 13 of his bill, is that it fixes a standard that is not in accord with the standard in most of the States. Most of the States would not permit the sale of articles containing the percentages mentioned in that fourth paragraph. It would result in the Government permitting a manufacturer to ship into the State goods that would be contraband under the State law. That is not fair to the State. It is the object of the pending bill to aid the States in the enforcement of pure-food laws. It should be elastic enough in its provisions to conform always to the limitations of the State law. If you were to undertake to ship into our State goods containing the percentages named in that fourth paragraph, they would be contraband when they arrived in the State and the packages were broken. Now, it defeats the purpose of national legislation to do that kind of thing, does it not?

Mr. MONEY. The Senator did not do me the honor to listen to what I had to say in the beginning or he has easily forgotten. I said that one of the principal objects was to make so reasonable a bill that the State would conform to it as near as possible, and we would have a uniform system of pure-food laws throughout the United States, the States getting together around the national legislation as a sort of nucleus, or being supplemental to it, for convenience of local administration and having the right of local administration. There is not anybody here or elsewhere who would stand up more stoutly and more persistently for the right of every State to regulate its police matters than I. That is my disposition. I am antagonizing all the time every effort to centralize this Government and endeavoring to retain within the several States all that power which was reserved to them in the ninth and tenth amendments of the Constitution.

Mr. HEYBURN. But I would suggest to the Senator that nearly all the

States have pure-food laws.

Mr. MONEY. I understand that. The Senator must not infer that I am entirely ignorant. This is no kindergarten, but the United States Senate.

Mr. HEYBURN. My suggestions were based upon that condition of facts; I am not attempting to criticize the Senator or to impeach his knowledge.

Mr. MONEY. As I remarked before, the Senator's State, under his own State law, rejected apples coming from California, because they had boracic acid and because boracic acid is poison, and the law says anything poisonous shall be stamped "poison." The reply to the sworn statement that there was nothing in it whatever was that he did not care whether the manufacturer or God Almighty put boracic acid in it, it could not go there. The object is to correct just such legislation as that, not by the power of Congress, because we have none, but by the persuasive power of national legislation in protecting the public health and at the same time giving an opportunity to the manufacturer of those products to eliminate anything hurtful and harmful, and to punish those who willfully transgress, so far as the Federal arm can reach them, and haul them to court and, with the proper processes, confronting them with witnesses and having the three chemists to examine into the preparation and determine its character.

Now, then, the original package must be labeled or branded or tagged so that it can be traced. It must be legible and discernible when it comes into the State, then it is broken and the State law comes in, as it should. Both Senators know very well that all the time original packages are being sent into States that have absolute prohibition of the sale. What about your liquor law and original packages going into a prohibition State? Can you stop them from going in? Yet with the perfect right in your police power, regulating health and morals, you can say, "You shall not distribute and sell, because then you come under the provision of our law."

Now, I respect the sentiments of the prohibition States, although I want to say I do not think a general prohibition law ever effects its object. We have in my State what I consider a great deal better, and that is the local-option law, enabling each county to determine for itself what it will sell and drink and use. And I want to say that out of seventy-six counties in the State only nine of them sell any kind of spirits. All the others are called "dry" counties. In all my experience as a voter I have never yet voted a "wet" ticket. I have never signed in my life a license or a petition for a license for a grocery or a saloon, and I have set the example of being a temperance man. I am not temperate, though, because I have determined to be temperate and have sworn somewhere to be temperate and wear a blue ribbon, but because I simply have enough control of myself without any such assistance as is associated with ribbons and buttons to keep myself from being a brute. In the first place, I do not care anything about any of those things, never having learned the use, and if I had I have enough confidence in my own self-control and resolution to know that I could quit any habit I might have contracted. As far as that is concerned, I do not know that I have a habit in the world, good or bad. I act every day just as I please, and I generally please to do that which I think is right, and I take the consequences. I have never charged the devil yet with any of my sins. I have not done anything because he has tempted me, but because I wanted to do it myself.

Now, the agency for the application of this law is, I think, properly in the Department of Commerce and Labor. It comes distinctively under that Department. The only thing we are concerned with particularly is the transportation question. We are doing all that we are doing today in any proposition that has been made here by way of bill, substitute, or amendment, because we have the power under that clause of the Constitution which enables us to regulate commerce with foreign countries, among the States, and with the several Indian tribes. That is the narrow ground on which we stand. Here is a Department specially organized to take care of commerce and transportation and manufactures. That is the proper Department to put in force these laws, whatever they may be, as we consider them and pass them. The Secretary of Agriculture is a man whom I have known for thirty years, a very honorable, industrious, and indefatigable worker. He is the best Secretary I have ever known there, I think, and there is no doubt but what he would want to do his duty.

But the Secretary can be deceived as well as anybody else. He has the particular line of work which is the duty engaging all of his attention. I can not understand why the Department of Agriculture, devoted to the product, the raw stuff, and nothing else, should be invested with the authority and power to administer laws which relate to the transportation of manufactures. I do not see the harmony of the thing. It is incongruous. It does not belong to that Department, and why should it be insisted on that the Secretary of Agriculture shall discharge those duties?

Mr. HOPKINS. Will the Senator allow me to interrupt him right there?

Mr. MONEY. Certainly.

Mr. HOPKINS. Take the subject of meats. Under laws that exist at the present time meats are inspected by agents of that Department.

Mr. MONEY. I know that.

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Mr. HOPKINS. Would it not be in harmony to have these chemical inspections proceed also from the same Department? All of our food products that go abroad must have the stamp of the Agricultural Department.

Mr. MONEY. I understand that that is true as to the raw product; but we are dealing now with articles in transportation, not with the raw product. The bill does not propose to cover the raising of cattle. It has no reference whatever, if the Senator will pardon me, to the meat product, but to meat on the car, and that is where we get in — on the transportation of the meat product from one place to another.

The States themselves have legislated very well to a certain extent on this subject. I have a list of such States here, and I have the State laws also. I had them copied, and I could read them if I had the eyesight, which I have not, but I shall ask consent to put them into the RECORD that they may be there for the information of Senators who have not taken the trouble to look into this matter for themselves.

Mr. ALLISON. I suggest to the Senator to ask permission to insert them all.

Mr. MONEY. I shall ask to put into the RECORD such matter as I consider of value toward the explanation of this subject.

The Secretary of Agriculture, as I have said, is a very useful and efficient administrative officer. I believe he will always do his level best; and yet we see his inability as we should see the inability of any other Secretary to cover his whole Department. He has a vast one. He has eight or ten laboratories; he has a great corps of scientific men who are working for the wages of day laborers, and less, simply in the cause of science—graduates of scientific institutions—some of them working for as low as $40 a month, men who have graduated from American and also from European universities, speaking half a dozen languages, and yet working for from $40 to $50 a month in the cause of science. In spite of the spirit of commercialism today and the great desire of people to accumulate, there are quite a number of people who pursue an intellectual pursuit, not for gain, but simply for the satisfaction which it gives them to make discoveries for the use of mankind.

That sentiment is prevalent around the German universities, where any man who has studied to become a lecturer on a certain topic or a certain science or a certain subject and who has become familiar with it, works for a very small salary, which would be contemptible in this country, devoting his entire intellectual research and knowledge to the elucidation of that question of science, philosophy, or whatever it may be. If one of that number should leave that circle to engage in any business and devote his great talents to mere money making he would incur the sneers of his former companions. We have also such people over here, but notwithstanding this the Secretary has great difficulty. His duties are every day extended as we increase and diversify our agricultural industries, particularly in stock raising.

I have the honor of being a member of the Committee on Agriculture and Forestry, to which these bills uniformly came until the last two Congresses, and I know something of what the Agriculture Department does. I know something of the requirements and duties in that Department, and I know we are always overloading it. The Department of Commerce and Labor was established for the purpose of unloading several of the other Departments of the Government. We take a bureau from one Department and a bureau from another and a division from another, and we are getting under the Department of Commerce and Labor those things which legitimately belong to that Department, and here is one of the things which, as much as any other thing, belongs there, because it is a matter of transportation alone, which brings it within Federal control and gives us jurisdiction because it is the product of labor, manufacturing labor generally. "Manufacturing labor" I say in general terms. The word "manufacture," of course, as literally construed, means made by hand, but it has now come to mean made by machinery. At any rate, this is a business that legitimately comes under the consideration of that Department and is included in these bills and these amendments. It is impossible for me to think that the Department of Agriculture can conduct this business as satisfactorily as can the Department of Commerce and Labor for the reason I have just stated.

In the amendment that I had the honor to produce here every provision is made to guard the rights of the States, which are not to be infringed and can not be under the amendment. I asked a gentleman to indicate to me where this intereferes with State rights. A distinguished lawyer and an ex-Senator went over it very carefully as to the constitutional question before I overlooked it myself, and he was satisfied that it did not.

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Mississippi yield to the Senator from North Dakota?

Mr. MONEY. Yes; I will hear the gentleman.

Mr. McCUMBER. I thought the Senator said — I did not understand him thoroughly—that he saw nothing in the amendment which he introduced here that would interfere with the rights of the States. Am I correct about that?

Mr. MONEY. Yes; that is what I said.

Mr. McCUMBER. May I call the Senator's attention right here to page 3 and read a little portion of it?

Mr. MONEY. Yes; read it.

Mr. McCUMBER. Commencing with line 6 on page 3, I find the following:

> And no person, firm, or corporation shall be convicted under the provisions of this act for having received in any State or Territory, the District of Columbia, or insular possessions, from any other State or Territory, the District of Columbia, insular possession, or from a foreign country, and delivered in original unbroken packages—

I call attention to that portion—

> original unbroken packages, for pay or otherwise, any article of food or drugs adulterated or misbranded within the meaning of this act, if said article is labeled, branded, or tagged in manner and form as required aforesaid—

That provides that they shall all be tagged, showing the name of the manufacturer—

> at the time of so receiving and delivering said article.

Then follows:

> *Provided*, That any person, firm, or corporation who shall receive in any State or Territory, the District of Columbia, or insular possession, from any other State or Territory, the District of Columbia, insular possession, or from a foreign country, any article of food or drugs not labeled, branded, or tagged, in the manner and form as required herein, shall label, brand, or tag said article with their correct name and address, before delivering the same, for pay or otherwise, in the original unbroken package.

It seems to me that the real meaning of that section is that as to the person receiving, even if the State provides, as it may provide, against the sale of adulterated or misbranded articles in original packages if they are a fraud — and adulteration and misbranding is a fraud—or if they are poisonous, and therefore not commercial, it may strike the goods in the original unbroken packages with those two exceptions.

Under the provisions of this amendment, if the retailer will put the wholesaler's name on the article he shall not be punished, no matter what the State laws may be. I can get no other construction out of that section; and if I am in error, the Senator, I know, of course, will be pleased to correct me.

Mr. MONEY. Yes; I think the Senator is in error. He started out with one idea and got onto another. He started out with the idea that I was infringing upon the rights of the States and then he undertook to show that it was an infringement upon the rights of the Government.

Mr. McCUMBER. No; the State may punish while the article is in the original package; but this amendment provides that the State shall not punish — that no punishment shall be had—if the article is in original unbroken packages, though it be a fraud and though it be absolutely poisonous. I do not understand the construction of the interstate-commerce law as to original packages to mean that you can ship anything else but what is known as a "commercial article;" and that is not a commercial article which is a fraud, such as adulterating or misbranding or which is not commercial by reason of its putrescence or other reasons. The State can reach them there in the original unbroken packages; but no matter how great the fraud, under this amendment the State can not touch the article while in the original package.

Mr. MONEY. The State can not touch the article in the original package, it is true, but it can touch it whenever that package is broken; and it can not be used by the citizens until the package is broken. That is where the State steps in, when it comes to its sale and distribution. Now, I have to say to the Senator, while this matter is up, that I have endeavored in my amendment to protect the retail dealer in the State, who has been the object of a great many objurgations in connection with the sale of adulterated foods, by leaving him out entirely. because we know that the small dealer can not examine all the food in the packages that come to him. He orders by the half dozen or five dozen or gross, or whatever it may be, and he can not stop to inquire into everything that is sent him. Therefore I intended to make the original compounder or preparer of that food responsible entirely, because it is impossible to hold the retailer responsible when he has not the ability to correct any of these frauds.

Mr. McCUMBER. The point I wanted to make with the Senator was that his amendment did advance Federal law over the police power of the State and nullify the police power to that extent.

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Mr. MONEY. Well, that is a different thing—

Mr. McCUMBER. That is the point I desired to make. The Senator said his amendment did not interfere with the State police power.

Mr. MONEY. I want to say to the Senator that there are very learned judges of the Supreme Court who differ upon the same state of facts, upon the same law, upon the same arguments, and the same Constitution. So it is not at all strange that two men with antagonistic views on this floor should differ a particle upon a proposition. The Senator holds to his view and I hold to mine. I think that is satisfactory to me at any rate.

Mr. President, I do not know that I am able to continue this debate, because I am suffering with a very severe physical disability. My old enemy, a neuralgic headache, has possession of me as usual, and I shall for the present conclude by asking unanimous consent to incorporate in the RECORD, as an appendix to my remarks, certain provisions taken from the food laws of Great Britain, and acts of the British Parliament and of several States in regard to a number of matters that come up in the consideration of my substitute. There are also a number of other things here that I should like to have printed. I will ask to have them all printed in the RECORD.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Mississippi yield to the Senator from Texas?

Mr. MONEY. Certainly.

Mr. CULBERSON. Mr. President, it has not been practicable for me to give the subject of this bill and the substitute the attention I should like. I should be glad, if it would not inconvenience the Senator from Mississippi, if in brief words he would explain the difference between the bill and the substitute which he has offered on the relative jurisdiction of the State and the Federal authorities. In other words, if either the bill itself or the substitute of the Senator from Mississippi provides for the regulation of merely manufacturing establishments within a State, irrespective of transportation from one State to another or between the States and Territories of the country, I should like to know that, because, as I understand, there is no authority on the part of the Federal Government to regulate manufactures in that sense. So far as the purpose of my present statement is concerned, it is only when those manufactures are being shipped within the meaning of the interstate-commerce clause of the Constitution that the Federal authorities or the Congress of the United States have any authority to regulate or control them. As I stated, not having much opportunity to look into these matters with reference to that question, if it would not inconvenience the Senator from Mississippi, I should be glad if he would explain the difference in that respect between the bill itself and his substitute.

Mr. MONEY. I am very sorry that I am not able to go into it any further. But I will say to the Senator that the substitute which I have offered provides only that the Government of the United States shall

interfere in the matter of transportation; and if any shipper or consignor or deliverer of goods shall purchase goods in the vehicles of transportation from another State, he can do that under the Federal law, but he must tag or brand or label them so plainly that you can trace them back to the shipper or manufacturer, who will then be liable to the penalty of fine or imprisonment if the articles that he has transmitted, delivered, or shipped, or transported in original packages, contain anything that is fraudulent or deleterious to the public health. After the package has been received the State law operates in its breakage and distribution.

I want to say, Mr. President, that what the Senator said about punishment for the infringement of State laws is incorrect. He said that under this act it can not be done. The State laws can proceed. This bill provides that the dealer can not be punished, under the provisions of this act, if the goods are labeled or tagged with the name of the manufacturer. They can punish just as they could, and as they have a right to do, no matter whatever legislation we enact.

I regret, Mr. President, that I can not proceed any further; but I will ask the liberty to have the matter I have referred to inserted as an appendix to my remarks. I may later get into the debate under the ten-minute rule.

The VICE-PRESIDENT. Without objection, the matter referred to by the Senator from Mississippi will be printed in the RECORD as an appendix to his remarks.

The matter referred to is as follows:

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* * * * *

Mr. McCUMBER. The Senator from Mississippi says that his substitute has been carefully constructed; that it has been carefully provided for in all its details. Mr. President, that is absolutely true. It has been carefully prepared for the object for which it has been given to the world. What is that object? First, to prevent, if possible, the enactment of any pure-food law; and, second, if that is impossible, to secure the enactment of a food law which will enable those manufacturers to enter the States out of which they would be kicked today. It is an attempt, on their part, to get into the State, notwithstanding the particular laws of that State.

There was an association meeting in Atlantic City, N. J., from the 12th until the 14th of this month. That association consisted of the Western Canned Goods Association and the Atlantic States Packing Association. They formed the two associations that met at Atlantic City on the 12th to the 14th of February. The packers of canned vegetables and fruits of all the States east of the Rocky Mountains and north of the Gulf States, with the exception of the Pacific coast States, were represented in this body, and while they were not members of this association, California and Oregon had representatives at this meeting. They are the manufacturers of canned goods.

Mr. O. L. Deming, of Chicago, is president of the National Association of Pure Food Manufacturers, which, as I say, is opposed entirely to the Hepburn bill, and is in favor of overriding all State laws. He desired to be heard before this association at Atlantic City, N. J. Here is the statement that is given to me by the president of that association, who presided during this meeting. During those deliberations they passed a resolution in favor of these pure-food laws. Mr. Deming, of Chicago, wished to be heard, as I stated, on the floor of the convention in the interest of what is known as the "Lannan bill," which is the same as the amendment of the Senator from Mississippi. This is what Mr. Fraser, president of the

Western Canned Goods Association, says:

> I, as presiding officer, stated to him that if he would give me the names of the members of his association, and if they were reputable manufacturers or packers of canned vegetables or fruits, that notwithstanding the fact that he was not a member of either of the associations comprising the convention, he could speak in the interests of these reputable food manufacturers or canners. He stated to me that he would not divulge the names of their membership. He did mention the name of one manufacturer, but would not mention the others. I stated to him that so long as he would not divulge their names he could not speak. He refused absolutely to do so, and consequently was not given a hearing.

It is proper for me at this stage to state who the president of this association was. He says of himself:

> I, in common with all canners in the State of Wisconsin, pack almost exclusively green peas in hermetically sealed cans. We use in our packing no other ingredients than sugar, salt, and water, in addition to the vegetables themselves. We sterilize our goods and cans by the use of heat. It costs the company that I represent from $5,000 to $10,000 for the sugar we use. In placing our goods on the market in other States they come into competition with peas packed where saccharine has been used as sweetener. Saccharine is a coal-tar product entirely, and in comparison with the price of sugar is very much cheaper. For instance, where the cost of sugar in our season's output is $10,000, in round numbers, it would cost the packer in other States where saccharine is used about $750. At the annual joint convention of the two associations above referred to resolutions were unanimously adopted indorsing pure-food legislation, this being done after a thorough discussion of the matter with Doctor Wiley. A rising vote was called for, and every man in the room got on his feet. Upon the noes being called for every one remained in his seat, so that it was a unanimous vote. While no particular bill is mentioned in these resolutions, they were meant to apply to the measures now before Congress.

Mr. MONEY. Will the Senator permit me to interrupt him right there, as I must leave the Chamber?

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Mississippi?

Mr. McCUMBER. Always, with pleasure.

Mr. MONEY. The Senator says that he does not know the name of a single one of the people composing this association, and he ventures to say that I do not and that nobody else does, and then he proceeds to read this statement. Here [exhibiting] is the list of membership. I never heard before that there was any secrecy about it; I never heard before that any man had ever made an effort to get the names of the members of this association and had failed to get them. Here they are by the page, and I will ask the Secretary to read them, if the Senator will permit me in his time, and the Senator will see who the men are composing this association.

Mr. McCUMBER. I do not know how long the list is, but if the Senator has the names, they can be printed probably.

Mr. MONEY. There is plenty of time.

Mr. SCOTT. Would it not do to have them printed in the RECORD?

Mr. MONEY. I suppose it would do some people just as well, but I have permitted my time to be absorbed since I have been on the floor by other Senators. I made no objection to that because I want all the light possible.

Mr. McCUMBER. I have no objection to the Senator taking all the time he wants.

Mr. MONEY. Oh, yes; the Senator has made a positive statement here that I did not know the name of a solitary man composing the association; that he did not know one, and that nobody else did. Now, it is time to hit the nail when it is in. Let us hit it right now.

Mr. McCUMBER. Let me ask the Senator how many pages he has there?

Mr. MONEY. Well, there are a good many. The members of the association are all put down there by name, their numbers are given, their streets, their cities, and their States.

Mr. McCUMBER. If the Senator will not take the time now, the list of names can be printed in the RECORD. It would take about half an hour to read them, according to his statement.

I do not wish to keep the Senate waiting half an hour. But if the names are printed in the RECORD we can all get at them in the morning. That would do just as well.

Mr. MONEY. I find there is no economy of my time and a great deal of economy of the time of the Senator from North Dakota. Of course, if he does not permit me to have the names read, I shall have to ask that they be printed in the RECORD.

Mr. McCUMBER. I will object at this time.

Mr. MONEY. I think on the spot is a pretty good time to have the names read, but I am willing to have them printed, if the Senator objects to their being read.

Mr. McCUMBER. I will simply object at this time. If the Senator wishes to put them in after I have gotten through, all right.

Mr. MONEY. I ask that the list of the members of the National Food Manufacturers' Association be printed in the RECORD as an appendix to my speech.

The VICE-PRESIDENT. In the absence of objection, the list referred to by the Senator from Mississippi will be printed as requested.

Mr. MONEY. I should have preferred to have it read now if it had suited the Senator from North Dakota.

[The list of names referred to will be found in the appendix to Mr. MONEY'S remarks on another page of today's RECORD.]

Mr. McCUMBER. I will say that I should be very glad to get the names of those manufacturers, and I wish I could get out also what they are manufacturing, before we get through with this debate.

Mr. President, I want to take up the substitute itself, and while I will not take up all of the sections, I will call attention to just a few of them. I stated some days ago that this would no more prohibit the introduction of fraudulent and spurious goods in any State than a sieve would hold water, and I say that today, and I will attempt to establish it by the instrument itself. Every section will assist me in proving that simple proposition. Let us take section 2:

> That every person, firm, or corporation who shall ship or transport, or deliver for shipment or transportation, from any State or Territory, the District of Columbia, or insular possession, to any other State or Territory, the District of Columbia, or insular possession, for pay or otherwise, any article of food or drugs, shall securely attach, in a conspicuous place, to every such article of food or drugs, in the form in which it is thus shipped or transported, or delivered for shipment or transportation as aforesaid (whether such form be as one individual article, package, crate, or bundle of packages), a durable label, brand, or tag, upon which shall be printed or written in the English language, so as to be easily discernible, the correct name and address, in some State or Territory, the District of Columbia, or insular possession, of the person, firm, or corporation shipping or transporting the same or delivering the same for shipment or transportation.

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You will see that all the section provides for is that the shipper shall label his goods; that if they will label where the goods come from, they are not compelled to do anything else with reference to them; and the section requires that there be securely attached in a conspicuous place "a durable label, brand, or tag, upon which shall be printed or written in the English language, so as to be easily discernible, the correct name and address, in some State or Territory, the District of Columbia, or insular possession, of the person, firm, or corporation shipping or transporting the same or delivering the same for shipment or transportation." The retailer, after he has broken the bundle, may destroy this entirely, and may sell all of the goods or articles in smaller packages without even that showing.

Then it provides:

> And no person, firm, or corporation shall be convicted under the provisions of this act for having received in any State or Territory, the District of Columbia, or insular possession, from

> **any other State or Territory, the District of Columbia, insular possession, or from a foreign country, and delivered in original unbroken packages, for pay or otherwise, any article of food or drugs adulterated or misbranded within the meaning of this act, if said article is labeled, branded, or tagged, in manner and form as required aforesaid, at the time of so receiving and delivering said articles.**

In other words, all that it is necessary for the manufacturer of the spurious article to do is to brand his goods, showing the manufacturer of them, and then they may be sold in original unbroken packages in any State in the Union. After they have been so sold and have become scattered so that they can become a part of the mass of the property of the State, then if you can root them out you can do so. But he is careful to see that they shall be sold before they can possibly be reached, and with nothing but his bare name upon them.

It goes further, following right along:

> ***Provided*, That any person, firm, or corporation who shall receive in any State or Territory, the District of Columbia, or insular possession, from any other State or Territory, the District of Columbia, insular possession, or from a foreign country, any article of food or drugs not labeled, branded, or tagged in the manner and form as required herein shall label, brand, or tag said article with their correct name and address before delivering the same, for pay or otherwise, in the original unbroken package.**

In other words, if the seller of the articles, knowing them to be spurious, shall simply put upon them the brand of the manufacturer he may sell them in the State, notwithstanding the State has laws absolutely prohibiting their sale in that State. It looks to me as though the attempt and desire of this measure was to enable the manufacturer of questionable products to ship his goods into a State, whose laws would prohibit the introduction or the sale of those articles in that State, and to prevent any punishment whatever, if they are in original, unbroken packages bearing the name of the manufacturer.

I come now to section 3:

> **That the Secretary of Commerce and Labor shall organize in the Department of Commerce and Labor a bureau to be known as the Bureau of Foods and Drugs; and it shall be the duty of the Secretary of Commerce and Labor to enforce the provisions of this act through the said Bureau of Foods and Drugs.**

How is any bureau to enforce the provisions of a criminal statute? How is the bureau to determine what evidence the court shall receive and what it shall not receive in a criminal case? What has the bureau to do with the prosecution or the enforcement of the law in any way other than the mere fact of securing samples and analyzing them?

The measure that has been introduced here and which has the support of the Committee on Manufactures simply provides that the Secretary of Agriculture shall assist in ascertaining what misbranded or fraudulent goods are shipped from one State to another, and if he finds that there are such goods being shipped, he does not enforce the provisions of the law. He gets the goods in any way he has a mind to and analyzes them, and if he finds that they do not conform to the requirements of the law, the manufacturer may be notified, and he can show, if he sees fit, that the specimens examined were not manufactured by him, or had been tampered with since, or that the analysis is an incorrect one, or anything else in defense that he can establish. Then, if the Secretary of Agriculture is not satisfied, he may still report the matter to the district attorney of the proper district, and say, "If you feel that you can convict this man beyond a reasonable doubt of the commission of a crime, you may proceed to prosecute the case." It is left finally in the hands of the district attorney. Certainly no manufacturer could object to having all those safeguards thrown around.

This section of the substitute provides for a Bureau of Foods and Drugs in the office of the Secretary of Commerce and Labor. Tell me why it should be taken away from the Department of Agriculture. Mr. President, I am perfectly willing, so far as I am concerned, if it is necessary, to change from the Bureau of Analysis of the Department of Agriculture to this other Bureau, but as yet I have not heard a solitary reason why it should be so changed. We already have a law that the Secretary of Agriculture shall examine the imports into this country, and if he finds they are fraudulently branded, that they are adulterated or misbranded as to the place where they were manufactured, he may exclude them.

Has anyone heard any complaint about the enforcement of this law? The only complaint that could be made is that it has been enforced, and justly and rightly enforced. Those who have suffered from the enforcement of it have in no instance suffered unjustly, and they are the ones who would take away this duty from the Department of Agriculture.

Again, the Agricultural Department to-day has the examining of all articles that pertain to food products. The Secretary of Agriculture has his Bureau of Chemistry for that purpose. We have had a provision in every appropriation bill, I think, since I have been here appropriating a certain sum of money for the use of the Secretary of Agriculture to determine what are proper standards of food products. Has anyone heard of that power having been abused in the slightest degree? Has it not been beneficial to the country? He determines what is the best character of flour, that it shall contain so much of starch, so much of gluten, and so much of other ingredients. There is nothing in the provision that makes it a standard.

I for one, Mr. President, stand firmly against any man or set of men fixing a standard of food until we know more than we do to-day, by chemical analysis or otherwise, with respect to the value of foods and the real effect of any food upon the system. There are too many stomachs to be affected by a particular kind of food for us to safely say what this individual or that individual may have, or what shall be excluded from commerce and what shall be included in commerce. It seems to me that it is proper for the Secretary of Agriculture to attend to the analyses of these foods.

Now, I come to section 4, which provides that—

> Any inspector, agent, officer, or other person authorized by the Secretary of Commerce and Labor to procure samples, as aforesaid, shall, at the time of the taking thereof—

That is, of samples—

> notify the person or firm.

I wish Senators would listen a moment to the red tape that one must go through in order to get a sample that can be used in the courts; and impliedly there is a refusal on the part of Congress to allow the courts to receive anything else except a sample that is obtained in the manner which it requires seven pages of literature to determine. They are to be taken and then analyzed under the provisions of section 4.

Then notice is to be given, and before you can even purchase an article at a store for the purpose of examining it you must send for the manufacturer and he or his agent must be present while you are purchasing that article. Then it is to be divided into two or three or four parts, and they are sent here and there. Then the manufacturer's agent analyzes his part, somebody else analyzes the other part, and then a third person is to analyze another part, and when it comes before the court the court must receive these ex parte analyses before it can proceed practically with the trial of the action.

How does the bill we have recommended provide? The Secretary of Agriculture can go into any store in this city, in any city, in any State, and he can buy 500 articles of canned goods from a certain manufacturer in 500 different cities if he wishes. He can have them analyzed. He can give notice to the manufacturer that out of the 500 analyses he finds all of the goods adulterated or misbranded. All those 500 cans may be used, or any number of cans, in the court and any new analyses be introduced, and the court would take testimony the same as it would in any other case. But under the provisions of this measure we determine what evidence shall be received and what evidence shall not be received. We make rules for the admission of evidence and then determine the weight of that evidence. We say that the ex parte analysis in the criminal case shall be prima facie evidence of its correctness, and the analysis by another person shall also be prima facie evidence, and then if those two disagree, before you can go on with the trial, you must get a third person to analyze the third portion of the can. You can not go and get a dozen other cans from as many different places and analyze them.

That it is not the worst of it. Before you get through with this matter you provide another thing:

> *Provided*, That at any time after any proceedings have been commenced under any of the provisions of this act in any United States court the defendant shall have the right to receive from said district attorney a copy of the results of any examination or analysis which will be offered in evidence against said defendant in said proceedings.

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In other words, before the defendant goes upon the stand in any way he will be entitled to have not only what evidence will be used against him, not only what witnesses will testify against him, but he must have the result of that testimony, so that he may be able to meet it in a criminal case in a trial in one of the district courts of the United States. Is not that an unheard-of provision?

Now, again, Mr. President:

> SEC. 9. That the Secretary of Commerce and Labor may publish from time to time, in like manner as other publications of his Department, bulletins of the work done in enforcing this act, and such other information regarding the same as he may deem proper, to be distributed as public documents in like manner as other publications of his Department: *Provided*, That the name of any brand, or the name of any manufacturer, person, firm, or corporation, shall not be published in connection with examinations or analyses, or results of examinations or analyses, of articles of food or drugs found to comply with the provisions of this act: *And provided further*, That the examinations or analyses, or results of examinations or analyses, of articles of food or drugs found to be adulterated or misbranded within the meaning of this act shall not be published, nor the names of any person, firm, or corporation, in connection therewith, until the person, firm, or corporation so violating the provisions of this act has been regularly convicted.

We would have no objection to the second proposition, but why should you prohibit the publication of the fact that goods are pure; that goods which have been submitted to the Secretary of Commerce and Labor the analysis shows are pure; that the result of that analysis shall be held in abeyance and the public shall never know anything, except the fact that the products have been questioned, and no one who is producing an absolutely pure article shall have the right to say, "This article has been questioned; the Secretary of Agriculture has found that it is unquestionably pure." But he can not have that matter published. The object of it is this: So that we can get good goods, which would naturally interfere with and compete against poor goods, exactly on the same level with the poor or adulterated goods. In other words, that the fact of purity being established, which would enable them to compete against the poorer articles, shall not be made public and the public shall not have any knowledge of it. It can have no other meaning. It can have no other or further result.

There are a great many of these provisions. I will call attention now to a definition in section II, I think it is.

It is under the definition of "adulteration":

> Fourth. If it contains any substance or ingredient, whether added or otherwise, which, in any quantity in which it might reasonably or advantageously be used in food or drink, will injure health, or contains any substance or ingredient which, by chemical combination or otherwise, renders such article of food unwholesome or injurious to the health of the consumer.

I wish the Senator from Mississippi would explain what he means by "advantageously used." If it can be advantageously used in any food or drug, then any of these ingredients may be used under this section. I do not understand the meaning of it, and I do not know whether or not anyone else can explain it.

Again, commencing on line 25, page 12:

> Second. An article of food shall not be deemed adulterated or unwholesome by reason only of being artificially colored with harmless coloring matter, if it is plainly stated on the label that said article is colored.

What is the necessity, then, if coloring is harmless, to state on the label that the product is colored? What is the use of this article? It adds nothing. There is nothing now in the law to prevent the use of any coloring matter which is not harmful.

Again:

> Third. An article of food shall not be deemed adulterated or unwholesome by reason only of the addition of a harmless preservative, or by reason of the addition of any substance for legitimate purposes.

What is a legitimate purpose? In other words, it shall not be deemed adulterated if the preservative is harmless, and it shall not be deemed adulterated, though it is harmful, if it is for a legitimate purpose of preservation.

That, Mr. President, is just exactly what the manufacturers of preserves, who use boracic acid, salicylic acid, and a hundred other kinds of ingredients to preserve and to color, wish to prevent. In other words, they do not want to have the State itself enforce its laws against a food article, provided they themselves think the preservative has the legitimate purpose of preservation, or because the substance might be added for the legitimate purpose of coloring, so as to make it appear more attractive to the eye.

Again I call attention to another portion of section 4:

> Fourth. That the following preservatives shall not be permissible in greater quantities than the following amounts: Boric acid, one-half of 1 per cent, or its equivalent in borax; sulphurous acid, one-twentieth of 1 per cent, or its equivalent in sodium sulphites; salicylic acid, one-tenth of 1 per cent, or its equivalent in sodium salicylate; benzoic acid, one-fifth of 1 per cent, or its equivalent in sodium benzoate; saltpeter, one-fourth of 1 per cent.

The substitute allows the use of every one of those preservatives notwithstanding the fact that Michigan, Kentucky, Illinois, Missouri, North Dakota, South Dakota, and a dozen other States I might mention, absolutely prohibit by their laws the use of several of these ingredients in food products, claiming that it is not necessary, but that it is done for the purpose of deceiving and that in most instances they are poisons. None of us here knows how much of one of these preservatives can be safely used. But they can even avoid this by a provision found on the very next page. It says:

> *Provided further*, That in stating the name of any added substance it shall be in compliance herewith if the trade name only of any proprietary preparation which has been added to food is plainly stated on the label of such article, if said trade name of said proprietary preparation, together with the formula of said preparation, has been placed on file with the Secretary of Commerce and Labor.

In other words, they can use any amount of boracic acid. They can use any amount of salicylic acid. They can use any other poisonous dyes or coal-tar dyes provided they will give it a proprietary name; and then the substitute provides that after the proprietary name is given, the Secretary of Commerce and Labor shall under no circumstances divulge the secret constituents of the proprietary article. It might be wholly salicylic acid or boracic acid, but the public shall get no knowledge whatever of its contents.

The whole object of this substitute carries out what was stated in the committee by a number of these people who I believe constitute this new association. They presented to the Committee on Manufactures this proposition. They said: "Certain coal-tar dyes and certain other ingredients used for preservatives in our opinion are not harmful, but the people of the States believe they are harmful. We say that glucose is better and more wholesome than honey or sirup, but the people have a prejudice against glucose as a substitute for honey or for sirup, and, therefore, as their prejudice is unfounded, we have a perfect right to deceive them. In other words, the people have no right to allow their simple prejudices to prevail against our foods, and if we put in salicylic acid, and we know that that acid, in the amount we use, is not injurious to health, then the people of the State have no right, acting upon their prejudice, to know what we put in our preserves." That is being carried out to perfection in the substitute. Again I call attention to section 13:

> That this act shall not be construed by any specific standards for food not incorporated herein.

If it is not to be measured by any standard of foods I do not know how on earth you are going to measure it. It seems to be a mere negative clause intended to destroy the effect of any good to the people or of any danger there might be in the substitute to this particular class of manufacturers.

I come again to section 14:

> That the term "drug," as used in this act, shall mean all drugs, medicines, and preparations intended for medical purposes and recognized in the United States Pharmacopoeia or the National Formulary as drugs or medicines for internal or external use—

There they stop. In other words, it would not touch any of the patent medicines. It would not affect any of the frauds. It is perhaps true that 95 per cent of the drugs sold in the United States consist of patent medicines or proprietary medicines. It is perhaps also true that 95 per cent of the patent medicines are frauds, and thus they would leave this substitute as applying simply to about 5 percent of the articles that are sold in the drug stores under prescription.

I call attention to section 17:

> That for the purposes of this act an article of drugs shall be deemed to be misbranded:
>
> * * * * *
>
> Second. If it, or any package, bottle, or receptacle containing it, shall, by label, brand, or tag, or otherwise, be deceptive as to its weight or measure.

That is pretty important. They have determined in this good measure, which the Senator says has not in the slightest degree imposed upon him, that if a receptacle which purports to contain a quart contains only nine-tenths of a quart it shall be deemed misbranded, and the same is true of the goods. They seem to desire to concentrate the energies and the thought of the Senate and of Congress upon a matter of weights and measures, and they are perfectly satisfied that Congress shall provide that if any article of food or drug or liquor does not contain the weight or quantity that is stated on the bottle it shall be deemed misbranded and adulterated.

There is not, perhaps, a single manufactured article, drugs or otherwise, that does say it contains one quart or it contains one pint or anything of the kind. So if they were even attempting to reach that part of what might be considered an abuse, they would not do it. Everyone knows, outside of those of us who live in the prohibition States, that every champagne bottle has a false bottom which runs pretty near up to its neck, so that it does not hold more than about a pint, while it appears upon the outside to [p. 2664] be a quart bottle. There is nothing which requires the manufacturer of this champagne to say that the bottle contains one quart, but if he does put that on it and it does not contain a quart, then he shall be guilty of misbranding and of adulterating.

Mr. President, I have gone very hastily over the provisions of the substitute bill, not as thoroughly as I should like, but I will submit to any Senator who will read it carefully what I stated in the beginning. It is proposed by those manufacturers whose goods are under the ban of the food laws of the several States. It seeks to prevent any pure-food law. If it can not prevent that, it seeks then to have Congress pass a law which will nullify the effect of the laws of the several States so far as it is possible.

In reading a little from the National Druggist, which is a magazine published in the interests of the drug trade and especially in the interest, as I would judge, of the manufacturers of proprietary and patent medicines, there is a heading, "How to defeat pure-food legislation." Then it proceeds to state the fact of this organization, which is the National Association of Pure Food Manufacturers. It raises them as the standard bearers of the attempt to prevent pure-food legislation. But it gives them some wholesome advice. It says the only way to deal with this question is to go right at the throat of the rascals who are trying to perpetuate a pure-food law upon the States, and not to do it in any such underhand way as this national association seems to wish to carry out its project.

Now, Mr. President, I want only to say in closing that the bill which has been introduced by the Senator from Idaho [Mr. HEYBURN] is practically the same one that we have introduced for the past three or four years. It has for its object only supplementing the laws of the several States in their attempt to prevent the importation of misbranded and impure articles of food. It makes no standard of foods by anyone. It simply declares what shall de deemed misbranded, what shall be regarded as adulterated, and no one can object to those definitions. Then it further declares that neither misbranded nor adulterated goods shall be transported from one State to another.

The remedy is not by a pure-food commissioner saying upon his own opinion that this food contains boracic acid and it shall not be sold in the State of North Dakota or in the State of Wisconsin, but the Secretary of Agriculture can say to the persons manufacturing it, "We do not believe that your food product comes within the definitions prescribed in the law; you may have your hearing." They have their hearing. Then he is not compelled to report anything, but if he thinks they have not made out a defense or if they refuse to change the character of the ingredients, then he may say to the district attorney of the proper district, "Go ahead and prosecute your case if in your judgment it is proper."

Not only that, Mr. President, but I can go into a store here and buy canned goods, and if I find what is said to be potted chicken is composed of pig's jaw and calf's neck I can go to the prosecuting attorney myself and present that case and ask him to investigate it.

If we enact a criminal law we ought to make it so that any person can make his complaint, whether it is the Secretary of Agriculture, whether it is the food commissioner of any State, or anyone else who thinks that he has a grievance and ask that the law shall be enforced. To do that we do not want to have ten or fifteen pages of red tape and conditions under which we can get a sample, and then only to be used in certain cases, and never to be used six weeks, I think, after it has been procured. This red-tape business, Mr. President, what you have to do after you get hold of your sample, will take a longer time to go through than the statute of limitations as is provided in the bill, and after the lapse of sixty days, I think it is, the evidence could not be used at all.

I say, Mr. President, with all due deference to the views of the Senator from Mississippi [Mr. MONEY] I think these cases should be prosecuted the same as any other case in a criminal court. If we find that a defendant willfully and maliciously imposes upon the public and a jury of twelve men with all the evidence that either the prosecution or the defense can bring before them ascertain that he is willfully disobeying the law, then he is to be convicted; and nothing more and nothing less ought to be in a law of this character.

Mr. NELSON. Mr. President, during the early part of the debate on this bill the Senator from New Hampshire [Mr. GALLINGER] took occasion to refer to an article from the American Druggist, I believe it is called, the trade paper, about the action of the Minnesota Pure Food Commission in excluding Lea & Perrin's Worcestershire sauce from that State. I told the Senator at the time he quoted from the paper that I thought there was some mistake about it. I had no facts at my command, but I was not aware of the fact that that sauce had been excluded from our State.

Since then I have ascertained the facts in the case, and I desire to have the Secretary read first an article from the Minneapolis Tribune and, second, two letters from the manufacturers of this sauce explaining the whole thing.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

A BOOMERANG ATTACK.

The enemies of pure-food legislation are busy, and are especially active now in discrediting pure-food laws and officials, because of the fight that is on at Washington for national pure-food legislation. A sample of the literature being scattered abroad is the pamphlet headed "An example of the despotism of pure-food laws," reprinted from the National Druggist. It attacks the Minnesota dairy and food commissioner viciously for enforcing the law against a largely used proprietary food product, found to contain salicylic acid.

As Mr. Slater's interview in the Journal shows, the whole incident is misstated in the pamphlet. The product was not barred from Minnesota, and no man was injured in his business. The manufacturers were merely informed that their article was illegal in this State and must not be sold after January 1 unless it could be made without salicylic acid as a preservative. The manufacturers complied at once. They found that the product could be made to keep without any preservative, and they are now making it in strict conformity with the law.

If the enemies of pure-food regulation can not find better cases than the Minnesota one, they would help their cause by keeping still. The law barring salicylic acid from food products is based on the fact that its continued use is injurious to the health. Without confiscating any goods or injuring anyone, Mr. Slater has caused the manufacturers to reform their practice, and the consumers are no longer compelled to take doses of salicylic acid with this particular preparation.

The poor, injured manufacturer is given altogether too much sympathy by these defenders of personal liberty. The public health is a bigger thing than a maker's profits. The law against preservatives is plain, and there is no excuse for breaking it. As the case in point shows, there is a good deal of humbug in the claims that bottled and tinned food products will not keep without preservatives. If they will not keep in a natural state, the public will be better off without them, but the fact is that with careful and clean methods in the factory, nearly everything put up will remain unchanged without chemicals.

Our State law is a great protection to the consumers and should be supported by a strong national law and a staff of experts to enforce it. (Minneapolis Tribune, January 13, 1906.)

EXHIBIT A.

NEW YORK, *December 6, 1905.*

E. K. SLATER, Esq.,
Dairy and Food Commissioner, St. Paul, Minn.

DEAR SIR: Since our consulting chemist, Dr. Francis Wyatt, had the pleasant interview with you regarding Lea & Perrin's Worcestershire sauce, when you gave us permission to use a small amount of benzoic acid, and we subsequently sent you some samples, which you passed as legal, we are pleased to tell you that we have gone on experimenting, and find that we can eliminate this preservative.

We are sending you by express, charges paid, one bottle of sauce from our new makings. This is absolutely free from all preservatives, and is the sauce we are now issuing, not only to your State, but throughout the entire country.

You will remember that by your suggestion we put a special mark on the wrapper and direction label of each bottle containing benzoic acid; so, in order to avoid confusion, we have retained the red star and simply added a dash below, viz. "——." We inclose a wrapper for your inspection.

We assure you that should you find any illegal sauce on your market it will be old stock, and that any stock now shipped by us will be absolutely free from all preservatives. We thank you for your courtesy and leniency shown to us, and trust that the pleasant relations now existing will always continue.

If you feel that you can give us an analysis pronouncing the sample free from preservatives and legal in your State, we would greatly appreciate it, and we need hardly say that an announcement in your monthly bulletin would be of great benefit to us.

We beg to remain, dear sir,

Yours, very truly.

JOHN DUNCAN'S SONS.

EXHIBIT B.

NEW YORK, *January 11, 1906.*

EDWARD K. SLATER, Esq.,
Commissioner, Dairy and Food Department,
St. Paul, Minn.

DEAR SIR: We are in receipt of your esteemed favor of the 8th instant, regarding an editorial which recently appeared in the pages of the National Druggist, of St. Louis. You are quite right in assuming that we did not instigate any criticism in the work of your department. This article only came to our attention a short time ago. We assure you that we are in no way responsible for its publication, and had nothing whatever to do with it; this was published without our knowledge or sanction.

We can only express our regrets, that after the very fair treatment you have accorded us any parties should have made use of the name of Lea & Perrins to write such an article. We were as much surprised and grieved to see it as you would have been yourself.

Thanking you for giving us this opportunity of explaining our position in the matter, we remain, dear sir,

Yours, very sincerely,

JOHN DUNCAN'S SONS.

Mr. GALLINGER. Mr. President, I desire simply to make a very brief observation concerning the papers the Senator from Minnesota sent to the desk. In the first place, the editorial from the Minnesota newspaper talks about what the enemies of pure-food legislation are trying to do, and of course I am placed in that category. The editor will be better able to judge [p. 2665] when this debate is through and when the vote is taken whether I am an enemy of pure-food legislation or not.

Again, Mr. President, it will be observed that this commissioner of Minnesota, finding salicylic acid in Lea & Perrin's sauce (he does not say whether it was in poisonous quantities or not) in his discretion permitted it to be sold in the State for a certain length of time after which it was to be barred—that is, under his administration of the pure-food laws of Minnesota the people of that State could poison themselves by using this sauce for two or three months, and they must cease to do so after that time had expired. I think that simple suggestion shows the absurdity of the entire proceeding.

I think I may take occasion before the debate closes to show that while salicylic acid and boracic acid are perhaps poisonous in the concrete sense, yet they can be used in minute quantities, as salicylic acid has been used in minute quantities in this particular preparation, without any harm whatever to the human system.

That is all I care to say about the matter at present.

Mr. NELSON. Mr. President, I am surprised at the statement of the Senator from New Hampshire. He intimates in his statement that the dairy and food authorities having that matter in charge concluded to let the people of the State use poison for a brief time. That is a very unfair statement. The facts were that they had a lot of goods manufactured containing certain preservatives which our State authorities said were not proper, and not to treat them harshly, in order that they might manufacture the product in a different way, they did not change the rule immediately. That the Senator criticizes and finds fault with, while, in the first instance, he called attention to the arbitrary conduct of the dairy and food commission of Minnesota in excluding the sauce, when, as a matter of fact, they never absolutely excluded it.

Mr. ALLISON. Mr. President, I now renew the suggestion I made at an earlier hour today respecting the arrangement concerning the debate on the pending bill. I ask that it be read.

The VICE-PRESIDENT. The Senator from Iowa offers the following, which will be read.

The Secretary read as follows:

> In lieu of the unanimous-consent agreement of February 13, 1906: It is agreed by unanimous consent that on to-morrow, Tuesday, February 20, at 3 o'clock p.m., and on Wednesday, February 21, immediately upon the conclusion of the routine morning business, the Senate will proceed to the consideration of the bill S. 88 "for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" that debate shall proceed under the ten-minute rule; that for this purpose the unfinished business shall be temporarily laid aside on Wednesday; and that at 5 o'clock on said day (Wednesday, February 21, 1906) the Senate will begin voting without further debate upon the amendments pending or then to be offered, and will vote upon the bill itself before adjournment.

Mr. HEYBURN. I will inquire of the Senator from Iowa if he did not intend to include the amendments in the portion of the unanimous-consent rule he offered, when he proposes that the Senate shall proceed with the consideration of the bill. It should be "the bill and amendments." It is the amendments, I understand, that are to be considered under the ten-minute rule.

Mr. ALLISON. The bill and amendments. I do not object to that, of course. We can not consider the bill without considering the amendments that are offered.

Mr. HEYBURN. What I want to get at is, Does the Senator intend that only the bill itself shall be proceeded with under the ten-minute rule?

Mr. ALLISON. Well, the bill——

Mr. HEYBURN. The Senator's suggestion this morning was that the amendments should be considered.

Mr. ALLISON. I think you would eliminate the ten-minute rule if you should discuss the bill without considering amendments. I think it is necessary now that at 3 o'clock tomorrow the debate shall be confined to the amendments.

Mr. HEYBURN. That is what I understood this morning.

Mr. ALLISON. Therefore I provide for general discussion of the bill between the conclusion of the morning business and 3 o'clock.

Mr. HEYBURN. I wish to make a suggestion. As I understand the proposed agreement, in proceeding under the ten-minute rule those having charge of the bill would only be permitted to speak ten minutes on the bill itself. That is all right as to amendments. Ten minutes is quite sufficient time, I think, on each amendment, but as to the bill itself, those having charge of it would perhaps want to occupy more than ten minutes.

Mr. ALLISON. If the Senator desires to occupy more than ten minutes he will have no trouble in doing so.

Mr. HEYBURN. I do not know that those having the bill in charge would want more than ten minutes to reply to any attack that might be made upon it, but this is different from the proposition made this morning.

Mr. ALLISON. The Senator will see that I provide for general debate until 3 o'clock tomorrow and that after 3 o'clock the debate shall continue under the ten-minute rule, and that continues during Wednesday. It is in lieu of the former agreement, which would have required us to begin voting on Wednesday immediately after the conclusion of the morning business.

Mr. HEYBURN. I am in entire sympathy with the proposed rule except I want to be protected in having time enough to answer such attacks as may be made on us.

Mr. ALLISON. I should think between the morning hour tomorrow and 3 o'clock would be time enough.

Mr. HEYBURN. But it is difficult to tell what will be done after that in the way of attack on the bill.

Mr. LODGE. Nobody can speak more than ten minutes after 3 o'clock.

Mr. HEYBURN. I may not be able to speak at all. I should like to have the opportunity to meet such an attack as may be made upon the bill. I might want to reply to it; that is the idea.

Mr. HOPKINS. I suggest to the Senator to make an additional request that he be given twenty minutes to reply.

Mr. SPOONER. The Senator need not be afraid of anything unfair.

Mr. HEYBURN. I am not afraid of anything unfair; only circumstances might arise.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Iowa?

Mr. HEYBURN. I have no objection.

The VICE-PRESIDENT. The Chair hears none, and it is so ordered.

Mr. HEYBURN. I am advised that the copies of the bill are exhausted, and I would ask unanimous consent that, say, 250 copies be printed.

Mr. KEAN. Let us have a reprint with the amendments agreed to printed in italics.

Mr. GALLINGER. And the amendments offered printed in brackets.

Mr. HEYBURN. I have no objection.

Mr. KEAN. Then we can readily understand what the bill really is or what it is proposed to make it.

The VICE-PRESIDENT. The Senator from Idaho asks that 250 copies of the bill, with the pending amendments in brackets, be printed——

Mr. KEAN. With the amendments that have been agreed to in italics and the amendments that have been offered in brackets.

The VICE-PRESIDENT. With the amendments offered in brackets, and the amendments already agreed to in italics. Is there objection to the request? The Chair hears none, and it is so ordered.

Mr. GALLINGER. I offer certain amendments which I ask may be printed and lie on the table.

The VICE-PRESIDENT. The amendments will be printed and lie on the table.

[p. 2666]

PURE-FOOD BILL

The VICE-PRESIDENT. The morning business is closed, and the Calendar under Rule VIII is in order.

Mr. MONEY. Before going to that business, I should like to have consent to have printed 250 copies of the amendment I offered to what is known as the "Heyburn bill." The copies are exhausted, I am informed, and there is a demand for additional copies.

The VICE-PRESIDENT. The Senator from Mississippi asks that 250 copies of his amendment to Senate bill 88, commonly known as the "pure-food bill," be printed. Is there objection to the request? The Chair hears none, and it is so ordered.

Mr. HEYBURN. Mr. President, under the unanimous-consent rule of yesterday it was agreed that at 3 o'clock today Senate bill 88 should come up under the ten-minute rule. I suppose that agreement was not intended to preclude it from being taken up before that time under the general rule for consideration.

The VICE-PRESIDENT. The Senator can have the bill taken up now by unanimous consent.

Mr. KEAN. I think it was distinctly understood that it was to come up immediately after the routine morning business today.

The VICE-PRESIDENT. But the unanimous-consent agreement applied only to the time after 3 o'clock.

Mr. HEYBURN. I have risen for the purpose of asking unanimous consent that the Senate proceed to the consideration of Senate bill 88.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Mr. HEYBURN. I have understood from the Senator from Massachusetts [Mr. LODGE] that he desires to take up the amendment offered by him at this time. However, I do not see him in his seat.

I desire this morning to offer a committee amendment of which I gave notice when I first called up the bill for consideration. It is for the purpose of perfecting the language in the latter part of section 4.

The VICE-PRESIDENT. The amendment proposed by the Senator from Idaho will be stated.

The SECRETARY. On page 5 of the reprint, line 3, after the word "and" and before the word "public," insert the words "after final judgment;" on page 5, line 4, strike out the word "the," at the beginning of the line, and insert the word "such;" on page 5, line 4, after the word "as," insert the words "may be prescribed by;" on page 5, line 5, after the word "regulations," insert "by the Department of Agriculture;" and strike out, after the word "Agriculture," in the last amendment, down to the beginning of line 9.

The VICE-PRESIDENT. The amendment proposed by the Senator from Idaho will be printed and lie on the table.

Mr. HEYBURN. I will ask, while the Senator from Massachusetts is otherwise engaged, that the letter which I send to the desk may be read.

The VICE-PRESIDENT. The Senator from Idaho requests the reading of a letter. Without objection, the Secretary will read it.

The Secretary read as follows:

ATLANTA, GA., *February 14, 1906.*

Hon. MR. HEYBURN, *Washington, D.C.*

MY DEAR SIR: Would you kindly have forwarded to Mr. John A. Green, president National Retail Grocers' Association, of Cleveland, Ohio, a copy of the Heyburn Senate bill, No. 88, introduced December 14, 1905?

As chairman of the pure-food committee of the National Retail Grocers' Association, I wish to inform you that your bill meets my hearty approval and indorsement. We have requested the retail distributors of food products throughout the United States to write their Representatives in Washington, urging them to support the passage of this measure. Our committee stands in readiness to go to Washington at any time, should our services be required.

Yours, very truly,

A. W. FARLINGER,
Chairman Pure Food Committee,
National Retail Grocers' Association.

Mr. HEYBURN. I desire also to send to the desk for reading a resolution bearing upon this question.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

As the Heyburn bill (S. 88) has been reported on favorably by a special committee of the national legislative council of the American Medical Association, and as we daily see the necessity of legislation against fraudulent foods and drugs in order that the public health may be preserved, and as such legislation has been annulled in previous sessions, owing to hostility in the United States Senate: Therefore, be it

Resolved, That we, the members of the Omaha-Douglas County Medical Society, will, individually and collectively, do all in our power, both morally and politically, to support this measure and also that our Senator, Mr. MILLARD, be strongly urged to give this bill his support and that a copy of this resolution be sent to Senator MILLARD.

[SEAL.]

WARREN H. SLABAUGH, *President*
JOSEPH M. AIKIN, Secretary

OMAHA, NEBR., *February 18, 1906.*

Mr. HEYBURN. I will state that that was sent to me by the Senator from Nebraska [Mr. MILLARD], and I have taken the liberty on his reference to use it.

Mr. President, while waiting for the Senator from Massachusetts to take up his amendment I desire to call the attention of Senators to section 4 of this proposed act.

Mr. McCUMBER. If the Senator from Idaho will yield to me for just a moment, as he is—

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from North Dakota?

Mr. HEYBURN. Certainly.

Mr. McCUMBER. As the Senator is introducing resolutions, I simply desire also to introduce a resolution in reference to this subject and have it read. I will say, in the first instance, that the resolution is one on behalf of the National Retail Grocers' Association of the United States, and represents an immense body. It is a letter written to Mr. Barrett, editor of the American Grocer, who requested that it should be presented to me. I ask that it be read in connection with the resolution that has just been read.

The VICE-PRESIDENT. Without objection the Secretary will read it.

The Secretary read as follows:

ATLANTA, GA., *February 14, 1906.*

EDITOR AMERICAN GROCER, NEW YORK: In reply to your favor of recent date would beg to say that I agree with you and that I am very much disappointed at the action of our convention in laying on the table the resolution indorsing the Heyburn Bill. This bill and this bill only embraces all points that the retail grocers of the United States have been contending for during the past twenty years. We have in this bill the protecting clause for which we so strenuously contested, and surely every retail distributor of food products would protect himself by taking a guaranty from the manufacturer or jobber from whom he purchases. What more could we ask?

President John A. Green has appointed me chairman of the pure-food committee of the National Retail Grocers' Association for the ensuing year, and I can assure you that our committee will continue to work in the future as we have in the past, concentrating our efforts upon the only fair, honest bill, a bill which has been before Congress for the past [p. 2719] five years, a bill which is indorsed by the honest manufacturer, and there are thousands of them, a bill which has been indorsed several times by the National Retail Grocers' Association, a bill which is indorsed by Secretary Wilson, of the Department of Agriculture, and which meets the approval of the President of the United States, and the only bill which has a shadow of hope of passing. I can assure you, Mr. Editor, and I reiterate our efforts will be concentrated upon this, and I trust the influence of the National Association will sustain us in working for the Heyburn bill, known as Senate bill No. 88, and now before the Senate of the United States.

I trust that through the editorial columns of the American Grocer, as well as the editorial columns of all the trade papers throughout this nation, we may have one strong appeal made to the retail distributors of food products in every State and Territory of the Union to at once wire and write their Representatives, urging them to support this measure. This bill will pass during the present session if the retail grocers of this country concentrate their efforts and do their full duty. I commend your efforts in the past and trust that in the future you will cooperate with us in one concentrated effort for the passage of this equitable and important bill. Should this bill pass during the present session of Congress the grocers will have a prestige in the nation that they never dreamed of. We are battling for the right and the right always wins.

Yours, most sincerely,

A. W. FARLINGER,
Chairman Pure Food Committee,
National Retail Grocers' Association.

Mr. HEYBURN. I desire to send to the desk another resolution to have read.

The VICE-PRESIDENT. The Secretary will read it.

The Secretary read as follows:

HOMOEOPATHIC MEDICAL SOCIETY
OF THE COUNTY OF KINGS,
Borough of Brooklyn, New York,
February 17, 1906.

Resolution adopted by the Homoeopathic
Medical Society of the County of Kings,
February 13, 1906.

Whereas the prosperity and happiness of a nation depend more on the health of the people than any other factor, and the health of the people is vitally dependent upon the purity of the food products and medicinal agents: Therefore, be it

Resolved, That we, the members of the Homoeopathic Medical Society of the County of Kings, do hereby pledge ourselves to do all in our power to arouse public interest in the Heyburn pure-food bill, which is now before the United States Senate; and be it further

Resolved, That we urge our Senators and Representatives to use their influence in every way to secure the passage of this bill; also, that copies of this resolution be forwarded to the Senators from this State and Representatives from Kings County and to Senator HEYBURN.

RALPH I. LLOYD, *Secretary*.

Mr. HEYBURN. I send to the desk and desire to have read an article from a Chicago paper.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

FOR THE PURE-FOOD BILL—RESOLUTIONS PASSED BY THE NATIONAL EXHIBITORS AT CHICAGO.

CHICAGO, *February 17, 1906*.

Resolutions urging Congress to pass the Heyburn pure-food bill, now pending in the Senate, were adopted unanimously at a meeting held under the auspices of the National Dairy and Pure-Food Show interests yesterday.

The meeting was the first in a series of pure-food symposiums to be held during the continuance of the exhibit, and each of the six speakers strongly emphasized the urgent necessity of national legislation which will afford citizens protection against food products adulterated with aniline and coal-tar dyes.

It was declared that nothing short of a national law would be an adequate remedy against unscrupulous manufacturers and dealers in adulterated products, and it was urged that the public, especially the women of the country, make themselves acquainted with the nature of the goods they buy, and that they purchase nothing but the purest goods.

The resolutions were introduced by Paul Pierce, superintendent of the Government's exhibit at the show, who was made chairman of the meeting.

Nearly 200 persons, many of whom were women, attended the meeting. The speakers were G. Edward Fuller; Prof. J. M. Trueman, of the University of Illinois; Edward K. Slater, food commissioner of Minnesota; J. D. Miller, commissioner of health; Charles J. Whalen, and A. Hanby Jones, food commissioner of Illinois.

Mr. HEYBURN. Mr. President, I believe the Senator from Massachusetts [Mr. LODGE] desires to take the floor at this time on the amendment heretofore offered by him, and I will yield to him.

Mr. LODGE. My amendment, on page 8, is pending. I hope it will be adopted by the Senate when it is voted on. It simply provides that the test of food products shall be made when they are in the condition in which they are actually consumed, and not in the condition in which they are necessarily transported. The amendment was drafted by Doctor Wiley. I do not mean to say that it is his amendment in any sense, but he drafted it in order that it might be put in proper form. It simply provides that where a preservative is used, which it is necessary to remove mechanically or by maceration in water or otherwise, the provisions of this proposed act shall be construed to apply only when such products are ready for consumption. That seems to me a perfectly reasonable proposition. It does not affect the bill at all. It simply prescribes the condition as to which the terms of the bill shall apply. It relates directly to the preservatives used for meats and fish.

* * * * *

Mr. HEYBURN. Mr. President, if it were confined to the class of articles to which the Senator from Massachusetts has referred, there might be no objection, but the amendment is in general terms. There are some articles which might safely, for the purpose of transportation, be surrounded by conditions such as are anticipated by this amendment, while there are other articles that could not be. If it were simply applied to the wrappings of fish and meat for the purpose of protecting them in shipment or preserving them under the conditions of shipment, it might be that if the conditions were limited to that class of articles it would do no harm; I am not sure. It would depend on how far it was carried.

I understand that the packers of

meat and fish desire to inclose those articles in wrappers that are saturated with or in some way contain these preservatives which are not supposed to penetrate the articles which they inclose. Now, if the provision was so guarded that this wrapping was of such a character as would not injure the articles of food, it would do no harm, but the amendment is couched in general terms. There are a great many things that would be permanently injured by reason of coming in contact with these preservatives. For instance, if the preservative was confined to the wrapper alone, so that it might not penetrate the substance, but if it was rubbed in and could only be removed by a process of soaking or boiling or washing, then, of course, it would be at the mercy of the care that was taken to remove it by those who were preparing it for use.

Mr. LODGE. Does the Senator suggest to limit the provision to fish and meat products?

Mr. HEYBURN. Just let me refer to the provision. It is on page 8, I believe.

Mr. LODGE. On page 8.

Mr. McCUMBER. Mr. President, I will suggest to the Senator from Massachusetts an amendment to his amendment which would contain these words:

> *Provided*, That the package or wrapper containing it shall also contain directions for removing such preservative.

Mr. LODGE. I have no objection to that, of course.

Mr. McCUMBER. That, it seems to me, would at least afford a remedy.

Mr. LODGE. That, I think, would cover the objection of the Senator from Idaho [Mr. HEYBURN].

Mr. HEYBURN. I will make this suggestion; I think this is necessary in order to cover my objection; The word "application," in line 22, is of an indefinite and rather elastic scope. The "application" might be in the wrapper, but it might be a saturation of the article itself. Now, if instead of saying "by an application," say "by an external wrapper"—

Mr. LODGE. Oh, no. That would destroy the whole purpose of the amendment.

Mr. HOPKINS. The amendment offered by the Senator from North Dakota will, I think, remove the objection.

Mr. LODGE. I think so.

Mr. McCUMBER. I simply made that as a suggestion. The Senator's amendment provides:

> *Provided further*, That when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, the provisions of this act shall be construed as applying only when said products are ready for consumption.

I propose to leave out the latter part after the word "otherwise," and add:

> *Provided*, That the package or wrapper containing it shall also contain directions for removing such preservative.

Mr. LODGE. The Senator proposes to insert that language after the word "otherwise," in line 24?

Mr. McCUMBER. Yes. My point is simply this: You may use boracic acid. It may be in the wrapper, and it may penetrate a very little, if any, into the ham. Otherwise it could be washed off; and if that direction was on the wrapper itself, or the cloth covering the ham, the people would be protected, as they should be.

Mr. LODGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Massachusetts?

Mr. HEYBURN. Certainly.

Mr. LODGE. I will accept the [p. 2720] amendment of the Senator from North Dakota [Mr. McCUMBER], and modify my amendment by inserting, after the word "otherwise," on page 8, in line

24, where it reads "the preservative is necesssarily removed mechanically or by maceration in water or otherwise"—to insert at that point:

> And when the package or wrapper containing it shall contain directions for removing such preservative or application.

The VICE-PRESIDENT. The Senator's proposed modification to his amendment will be stated at the desk.

Mr. LODGE. Of course, I suppose I am at liberty to make the modification so that the question on the amendment will be put in that modified form?

The VICE-PRESIDENT. That is the right of the Senator. The modification of the amendment will be stated at the desk.

The SECRETARY. On page 8, line 24, in the new print of the bill, after the word "otherwise," it is proposed to insert:

> And when the package or wrapper containing it shall contain directions for removing such preservative or application.

The VICE-PRESIDENT. The amendment as modified will be ordered to be printed and lie on the table.

Mr. LODGE. If the Senator from Idaho is ready to accept the amendment, I shall be very glad to have a vote upon it. I do not want to modify it any further in view of the amendment I have accepted.

Mr. HOPKINS. It would not be in order to vote upon the amendment now.

Mr. HEYBURN. I do not think I would be at liberty to accept the amendment, Mr. President.

* * * * *

Mr. President, when I yielded to the Senator from Massachusetts [Mr. LODGE] I was proceeding to consider section 4 of this bill. I feel it due to the conditions to make a statement in regard to the particular provisions of this section, because the newspapers, at least to some extent, and those who are opposing this bill generally, are charging that by these provisions the power is placed in the hands of one man—namely, the Chief Chemist, or head of the Bureau of Chemistry—to determine standards, and that it is within his power, under the provisions of this bill, to proscribe articles of commerce and denounce them in such manner as to seriously affect or injure the trade in them. If there is anything that this bill, and especially that this section of it, does not provide, it is for the fixing of standards by anybody. If there is anything that is not provided for or permitted under this bill, it is that the Chief Chemist, or the Chief of the Bureau of Chemistry, shall have power to denounce anything under any circumstances or to place a ban upon anything or, as I stated yesterday, to place the ban of disapproval upon anything. He is given no such power. He is simply the agent of the courts to gather testimony upon these questions for the purpose of being used at the trial in the court room and nowhere else.

He publishes no bulletins in regard to his labors or his investigations of such articles as may come under his charge for that purpose; he takes no proceeding; he exercises no authority either to denounce an article, to stop commerce in it, or in any way to affect it. I feel it due to this bill and to the subject to make this statement at this time in order that if any Senator can find anything in this bill upon which to base a different interpretation, he may have the opportunity of doing so, and in order that the country may understand that this bill must not be confused with bills which have been introduced in this and in other branches of the legislative department of this Government to provide for the fixing of standards. This bill fixes no standard upon anything; it authorizes no officer to fix any standard. It provides that the courts, and the courts alone, may determine whether or not an article is contraband under the provisions of this act. The object in avoiding any possible construction that might be held to be fixing a standard was that the bill might never come in conflict with the pure-food legislation of the various States. The States have established different standards, and they have a right to do so. Inasmuch as those standards vary, it would be impossible for an act of Congress, a general law, to avoid some conflict with some of those State laws if you should undertake to fix standards.

The substitute offered by the Senator from Mississippi [Mr. Money] undertakes to fix standards and prescribe what per cent of this or what per cent of the other may be permissible or may be forbidden. We can not accept that substitute because it would violate the underlying principle, one of the strongest principles of this bill; it would attempt to fix standards or authorize someone to do so.

The amendment offered by the Senator from Washington [Mr. Piles] in regard to condensed milk undertakes to fix a standard as to the percentage of solids, the butter fats that may be contained in that product. That is obnoxious to the spirit and the principle of this bill which seeks to avoid that. The percentage of alcohol or the percentage of any other article to be found in a substance subject to examination under the provisions of this bill is avoided. I repeat the Chief Chemist and the agencies of the Department of Agriculture, of the Department of Commerce and Labor, and of the Treasury Department of the United States are mere agencies for the purpose of gathering information throughout the country through the present existing machinery of those Departments, without the creation of any new Department, without the creation of any board, without the creation of any additional machinery of Government to gather these specimens for test, and that test simply consists in determining the existence or nonexistence of a fact.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from New Hampshire?

Mr. HEYBURN. Certainly.

Mr. GALLINGER. The Senator is so well informed on this subject that I want him to give me a little information, which, no doubt, he can do. It has been suggested that in the Department of Agriculture they are engaged in the matter of fixing standards. I know nothing about it. If the Senator will turn to page 6—I presume this is entirely explainable—on line 22, he will find the bill speaks of "the standard of strength, quality, or purity to be plainly stated on the box, bottle," and so forth; and in lines 24 and 25, "if the strength or purity fall below the professed standard or quality under which it is sold." I presume the Senator can explain that in conformity with the statement he has just made that there is to be no standard.

Mr. HEYBURN. Mr. President, I think I can explain it. The professed standard is fixed by the manufacturer or the seller. The language of the measure is—

> it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary.

That is not the fixing of a standard within the scope of the criticism that has been urged against this bill, because that is a standard fixed by the recognized dictionary or scientific work, and is recognized as the rule by which the whole country is governed.

Mr. GALLINGER. That relates to drugs.

Mr. HEYBURN. That relates to drugs. Those are recognized works of determination, the result of analyses and of experience combined. The other limitation to which the Senator has called my attention is:

> *Provided*, That no drug not defined in the United States Pharmacopoeia or National Form-

ulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof as originally packed.

There the manufacturer himself states the standard. This bill only requires him to tell the truth about it. In general aspect this bill might be termed "an act to compel the telling of the truth in regard to the business in which men are engaged."

Mr. GALLINGER. I assume that that proviso refers more particularly to so-called "proprietary medicines." [p. 2721]

Mr. HEYBURN. Yes; it is intended to cover them undoubtedly.

Mr. GALLINGER. They are compounds, and I do not see how the manufacturers can really state the standard of a package if they have got four or five or six or seven different ingredients in the mixture; they may be good or bad—I think they are generally bad—but how they can state the standard of the package or the purity of it is beyond me. I think they may show the different ingredients are pure, but just what standard they can fix I cannot comprehend.

Mr. HEYBURN. Well, if they can not do it, then they ought not, under any conditions, to be permitted to put their nostrums upon the market. If a man can not tell the public what he is offering them, he ought not to be allowed to offer it to them.

Now, referring to the clause to which the Senator has called my attention, on page 7, line 5:

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

Mr. McCUMBER. Mr. President

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from North Dakota?

Mr. HEYBURN. Certainly.

Mr. McCUMBER. Let me call attention here to the fact that that provision would not affect a case where they do not have a professed standard, and, therefore, that would answer the question of the Senator from New Hampshire. If they sell these articles without any professed standard, then, of course, they would not be liable for misbranding, if they did not measure up to that standard.

Mr. GALLINGER. If the Senator from Idaho will permit me, I think the Senator from North Dakota does not quite comprehend this proviso. It provides that any drugs not defined by the United States Pharmacopoeia or the National Formulary, which are the established and recognized authorities on this subject, shall have stated on the box or bottle or container the standard of strength, quality, or purity. I do not see that there is any exemption, and the Senator's suggestion that if they have not established a standard, they will not be required to do it, it seems to me, does not meet the objection.

Mr. McCUMBER. The Senator does not hold that the construction of that sentence would be that, if they did not place the standard upon it or did not state the standard of strength, quality, or purity, it would follow that it was adulterated?

Mr. GALLINGER. I do hold to that because the proviso reads as follows:

Provided, That no drug not defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof as originally packed.

So if the standard is not plainly stated upon it I think it would come under the ban. That would be my opinion.

Mr. McCUMBER. I do not think that it is so intended, and that is not my understanding of it.

Mr. HEYBURN. I think it should be so construed, because I do not think any unnamed nostrum should be sold upon the market as a professed curer of disease. I do not think any person should be permitted to offer upon the public market a medicine for professed relief against disease that had no statement as to what the medicine was. So that is a matter which I think the court will take care of.

Mr. GALLINGER. But, Mr. President, the difficulty is that the Senator by indirection is going to utterly destroy the so-called "patent-medicine business." If that is the purpose of this bill, why not state it? That is what this provision will do, according to my interpretation of it. I am not here to defend that class of people. I have very little confidence in their preparations, but they have rights under the law as it now exists, and if their business is to be destroyed, let us state it specifically, so that everybody will understand it.

Mr. HEYBURN. It would only destroy those who are unable, because of the facts, to state the strength, quality, or purity of their articles.

Mr. GALLINGER. And the standard.

Mr. HEYBURN. And the standard.

Mr. GALLINGER. They can not do it.

Mr. HEYBURN. If they can not do it, if they can not name the article, they ought not to be permitted to sell it.

Mr. GALLINGER. It is not a question of naming the article. In the first place, it is a very serious question whether we are going to require the druggists of this country who have compounds, some of which are not public, to disclose exactly what their formula may be; and in the second place, the difficulty is in establishing a standard where there are two, three, four, five or six different ingredients in the so-called "medicine." I do not see how that can be done. I think the word "standard" at least ought to be eliminated from that proviso.

Mr. McCUMBER. I think we can remedy that by inserting after the word "the," at the end of the second line, the word "professed;" so that it will read as follows:

> ***Provided*, That no drug not defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the professed standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof as originally packed.**

Mr. GALLINGER. I do not think that covers it at all.

Mr. McCUMBER. If it has no professed standard, they will not be liable.

Mr. HEYBURN. We have absolutely provided against the charge that this would require the publication of the formula upon the bottle. In another section of the bill we have provided especially that the formula need not be printed.

Mr. GALLINGER. Well, then, will the Senator state—because I am seeking light on this subject—what he would expect these people to place on the bottles under this proviso?

Mr. HEYBURN. Of course, that would be as variable as the remedies. There is such infinite variety of these nostrums that the standards would vary according to the character of the mixture.

Mr. GALLINGER. If they simply state that this remedy is of a proper standard, that the quality is good, and it is pure, would that fulfill the requirements?

Mr. HEYBURN. No; they would have to conform to the particular medicine. I am not enough of a druggist, I do not know enough of the technicalities of medicine, to enable me to analyze that and say just exactly what would be required in each particular case; but I do say that that provision has been submitted to and approved by the medical board of the Medical Society of the United States and by innumerable minor medical associations, and I have had read from the desk this morning from both schools of medicine, the unqualified approval of that provision.

Inasmuch as we of necessity went to those sources for information in framing a measure of this kind, I assume, the National Medical Association, the National Association of Druggists, the national associations of both schools of medicine having analyzed that provision, that there must be a plain and easy solution of the matter. I doubt if, outside of the Senator from New Hampshire, who is learned in the science of medicine, there is a member of this body who could analyze.

Mr. GALLINGER. But the physicians who have examined this bill may not have had their attention called directly to this provision. I am not going to oppose it beyond repeating what I have just said, that, in my judgment, reading it as I do here today, if that proviso remains in the bill as it is now it will make it utterly impossible for the so-called "patent medicine" dealers to continue in business. If they are required to establish a standard, they can not do it.

It is impossible for them to do it. If the Senator thinks that provision ought to remain in the bill, I have no particular objection to it, because I think these men will find a remedy somehow. The Senator does not require them, in another provision of the bill, to disclose their formulae. I think a bill passed one branch of the New Hampshire legislature last winter requiring them to do that thing. It did not become a law. There is a great deal of contention in certain quarters that they ought to do that for the benefit of the public. I do not know whether or not that would be good legislation. But this bill specifically excludes them from disclosing their formulae, and yet it requires them, before their goods can enter into interstate commerce, to state a standard on the box, bottle, or container, and to make some sort of declaration about the strength and purity. It is not enough to say it is pure. I confess I do not know what they will do under the provisions of this section.

Mr. HEYBURN. I confess I am curious to know what the patent-medicine people will say on behalf of their nostrums. I have the same degree of curiosity as that expressed by the Senator. I will await with much interest the declaration these gentlemen will make on behalf of their admixtures.

Mr. GALLINGER. Yes; but that is not in controversy. It is not the question of nostrums, so called—the patent medicines put on the market. That it not the question at all. These men have rights under the law today. The Senator himself does not ask them to disclose their formulae, but in my judgment here is a provision that will absolutely prevent them from entering interstate commerce with their goods, and I do not believe we ought to legislate in that way.

[p. 2722]

Mr. GALLINGER. I ask to take up three or four amendments which I offered yesterday, which are identical, except that they appear in different portions of the bill. On page 4, line 19, I think the first occurs.

The VICE-PRESIDENT. The first amendment proposed by the Senator from New Hampshire [Mr. GALLINGER] will be stated.

The SECRETARY. In section 4, page 4, line 19, after the word "substance," it is proposed to insert "in sufficient quantity to be;" and in line 24, before the word "injurious," to insert "in sufficient quantity to be;" so that if amended it will read:

> SEC. 4. That the examinations of specimens of foods, drugs, medicines, and liquors shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such article is adulterated or misbranded, or contains any poisonous or other substance in sufficient quantity to be deleterious to the health of human beings or domestic animals; and if it shall appear from any such examination that

> **such specimens are adulterated or misbranded or contain any added poisonous or deleterious substance or ingredient in sufficient quantity to be injurious to human health when used in the prescribed or usual manner of use of such article, etc.**

Mr. GALLINGER. I trust the Senator from Idaho will observe what I have to say. I will occupy but a few moments. I hope, after I have presented my views very briefly, the Senator will accept this amendment.

The question of what is deleterious to human health is a very broad one. We will take, as an illustration, the matter that was up for discussion yesterday—Lea & Perrin's Worcestershire sauce— in which there was found salicylic acid. It is not stated how much salicylic acid was found in it, though it presumably was an infinitestimal quantity, so far as the amount that is usually consumed at table is concerned. Salicylic acid and boracic acid as well are drugs which are used in medicine. The usual dose of both of those acids is 7½ grains—500 milligrams. That is not either the minimum nor the maximum dose, but it is the usual dose. Physicians are in the habit of giving 15 grains of salicylic acid in the treatment of rheumatism, and, a patient taking it day after day for a considerable length of time, no harm is presumed to come from it. Fifteen grains of salicylic acid would probably be as much as would be put into a gallon, more or less, we will say, of Lea & Perrin's Worcestershire sauce; and half the teaspoonful, more or less, that is consumed at table as an addition to the fish, certainly could do no harm to the human system; but if this bill remains in its present form any amount of salicylic acid or boracic acid, or any similar drug, found in a food supply would make it contraband and bring it under the ban of the law. So it seems to me there can be no harm in inserting the words "in sufficient quantity to be" before the words "deleterious to health." That is a matter that can be determined by the scientists who will have charge of the administration of this bill should it become a law, and they will have some leeway in the determination of the matters that will come to their attention. I will ask the Senator if he does not think this is a very proper amendment?

Mr. HEYBURN. Mr. President, I should like to have the benefit of a suggestion from the Senator from New Hampshire. In his judgment would this apply to preservatives injected into meat?

Mr. GALLINGER: I think not.

Mr. HEYBURN. I have been studying the language of the bill for the purpose of determining just how far the scope of the amendment would go.

Mr. GALLINGER. The provision is:

> SEC. 4. That the examinations of specimens of foods, drugs, medicines, and liquors shall be made in Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such article is adulterated or misbranded, or contains any poisonous or other substance in sufficient quantity to be deleterious to the health of human beings or domestic animals, etc.

Mr. HEYBURN. "Article" relates to all classes of food, and it would be a question of how much boracic acid might be injected into meat for preservative purposes or how much formaldehyde or any of those substances, embalming fluids—and it was a very active question during the late Spanish war as to whether or not embalming fluid that had been injected into meat was in sufficient quantity to affect the human stomach and destroy the digestive powers. If this were confined to poisons, as used in drugs, I should feel differently about it; but it is a question in my mind as to how far this proposed amendment would go. I do not know whether the Senator from New Hampshire has considered it in all its possible phases or not. For instance, we demonstrated recently here in the case of hams that the modern process of curing ham consisted in injecting with a syringe boracic acid once into the bone and once into the very heart of the meat of the ham for the purpose of preserving it. Of course that acid could not be removed, and it would be very difficult for us to determine just what quantity was in the ham.

Mr. GALLINGER. I quite agree with the Senator on that point, but, per contra, under the terms of the bill, if an infinitesimal quantity of boracic acid is found, it immediately places the article under the ban of the law. There may be a little difficulty, perhaps, in the line suggested by the Senator, but I think it would be much less than it would be under the terms of the bill. I feel sure that we do not mean to legislate so as to make a man who uses in the preparation of any article of food a quantity of drug so small that it has no appreciable effect on the human system amenable to the law and that his goods shall be placed under the ban and denied the privilege of interstate commerce. I do not think there will be the least earthly difficulty in the matter if the bill is amended as I suggest.

Of course the scientists who will have charge, in the first place, of the administration of this proposed law and in determining these questions will be fully competent to determine whether or not the quantity of adulterant, if it may be so called, is sufficient to do any harm. On the other hand, if they are not given the privilege of so determining the question, they will be held to a determination adverse to the manufacture of the goods if the least possible portion is found in the goods. Is not that correct?

Mr. HEYBURN. If the Senator will permit me, I should like to call his attention to the limitation placed upon this very provision, commencing on line 25, at the bottom of page 4. The limitation was intended to cure or meet the objection of the Senator from New Hampshire without throwing the door wide open to the use of such quantity as might in the judgment of the packer be safe. The limitation is contained in these words:

> And if it shall appear from any such examination that such specimens are adulterated or misbranded or contain any added poisonous or deleterious substance or ingredient in sufficient quantity to be injurious to human health when used in the prescribed or usual manner of use of such article.

Those are the words of limitation, and I felt at the time that it was as far as we ought to go without chancing the throwing open of the door to just such conditions as exist in reference to the method of preserving meat in warm weather by those very drastic and radical processes that were generally condemned throughout the country.

If we say "in sufficient quantity to be deleterious to the health of human beings," then it will leave it to the packer primarily to determine; and I do not think it will protect him at all. I think the words of limitation to which I have called the attention of the Senator are perhaps safer for both parties and will effectuate the purpose to be accomplished; but there is some danger in the amendment offered by the Senator from New Hampshire. There would not be, however, if it were confined to drugs.

Mr. GALLINGER. No.

[p. 2728]

Mr. HEYBURN. There would be no danger if confined to drugs, but confined to preservatives used in the embalming processes of meats there is no little danger. I do not like that provision.

Mr. GALLINGER. I do not quite understand the phraseology of the bill which the Senator quoted:

> And if it shall appear from any such examination that such specimens—

That is, drugs, medicines, liquors, or foods—

> are adulterated or misbranded or contain any added poisonous or deleterious substance or ingredient injurious to human health when used in the prescribed or usual manner of use of such article.

Does the Senator mean used medicinally?

Mr. HEYBURN. Well, of course, that limitation applies not only to medicines and drugs, but it applies also to articles of food.

Mr. GALLINGER. Yes; certainly.

Mr. HEYBURN. So the use would be determined by the character of the article.

Mr. GALLINGER. The Senator is aware, as I suggested a moment ago, that medicinally 15 grains of salicylic acid is frequently administered and no special harm comes. This provision says "injurious to human health when used in the prescribed or usual manner of use of such articles." Does the Senator mean in the medicinal quantity—that a man can take an article of food and eat it at a meal if it does not contain more than 15 grains of salicylic acid?

Mr. HEYBURN. I would suggest to the Senator that to obviate the objection which I see in it, can not the amendment be limited to drugs?

Mr. GALLINGER. I think so. I think that would be very wise.

Mr. HEPBURN. Then it would be clear of controversy.

Mr. GALLINGER. Will the Senator take that into prayerful consideration?

Mr. HEYBURN. Yes; and if the Senator between now and the time the amendment comes up will just incorporate a limitation there making it apply only to drugs, I shall have no objection to it.

Mr. GALLINGER. Very well.

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PURE-FOOD BILL

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 88) for preventing the [p. 2747] manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Mr. HEYBURN. Mr. President, I desire this morning to present some resolutions bearing upon the bill. I send to the desk for reading, first, a letter from the chairman of the American Medical Association.

The VICE-PRESIDENT. Without objection, the Secretary will read it.

The SECRETARY read as follows:

AMERICAN MEDICAL ASSOCIATION,
Cincinnati, Ohio, February 20, 1906.

MY DEAR SIR: The American Medical Association by unanimous petition of the medical profession from each of over 2,000 counties of the United States, reaffirmed by the recent action of its legislative council, respectfully asks you to vote for the "Heyburn pure food and drug bill." Such action on your part will receive the gratitude of over 135,000 physicians of the country.

Very respectfully,
CHARLES A. L. REED, *Chairman.*

Hon. WELDON B. HEYBURN,
United States Senate, Washington, D.C.

Mr. HEYBURN. I send to the desk an accompanying document, and ask that it be read.

The VICE-PRESIDENT. Without objection, the Secretary will read it.

The SECRETARY read as follows:

ACTION OF THE AMERICAN MEDICAL ASSOCIATION ON THE HEYBURN PURE FOOD AND DRUG BILL.

To the Senate and House of Representatives in Congress assembled:

The American Medical Association, through its legislative council in session at Washington, D.C., January 9, 10, and 11, 1906, unanimously adopted the following:

"Your committee appointed to consider legislation for honest foods and pure drugs begs leave to report that it has considered the suggestions of the chairman and has examined in detail the provisions of the Heyburn and Hepburn bills, and finds nothing in these bills, which, in the opinion of the members of the committee, would injuriously affect any legitimate business concerned in the manufacture and sale of foods, liquors, or drugs, and that the bills, or either of them, would afford adequate protection to honest manufacturers of and dealers in such products, and security against imposition, fraud, or danger to the buyer.

"Furthermore, your committee respectfully recommends that the remarks of the chairman, Doctor Reed, be considered and transmitted to Congress as a part of this report."

REMARKS OF THE CHAIRMAN, DR. CHARLES A. L. REED, RELATIVE TO THE PURE FOOD AND DRUG BILL.

After reviewing the previous history of the Heyburn pure food and drug bill, and calling attention to the fact that it had been made the subject of a general referendum to the medical profession, with the result that over 2,000 petitions from as many counties in the United States had been received and forwarded to Congress, the chairman, Doctor Reed, added:

"It is probably unnecessary for you again to make it—the Heyburn pure food and drug bill—the subject of a general referendum, as the petitions and correspondence previously sent to Senator HEYBURN are being utilized before the present Congress. It is important, however, that the medical profession, and, for that matter, the public should be informed of the character of the opposition which was aroused by the measure before the last Congress. This opposition was active, insistent, persistent, and judging from the results, as well as from its boasts, was effective. An analysis of the proceedings in committee shows that the antagonism was derived from the manufacturers of blended and otherwise adulterated liquors, from the fabricators of foodless foods, from importers of foods and medicines so worthless as to be denied a market in Europe where they are made, from the makers and purveyors of worthless, dangerous and enslaving drugs—interests which, in the aggregate, and judged by the character of their business, can not go clean-handed into any court of justice or command an honest footing before any legislative committee or legislative body in the country.

"The interest of the medical profession in this measure is aroused from the special and intimate knowledge possessed by physicians of the influence of impure food on the public health, but more particularly of the disastrous results arising not only from the widespread consumption of mere nostrums, but from the dispensing of medicines, many of which fall below the pharmaceutical standard. As a matter of fact, while the Pharmacopoeia assumes to establish a certain standard of drugs there is at present no national law, nor, so far as I am informed, any State law to enforce that standard. As a consequence, manufacturing establishments, some of them enjoying a high grade of commercial rerpectability, openly acknowledge that they manufacture pharmaceutical preparations of varying degrees of purity. They plead, in extenuation, that this is to meet the demands of the market. The better druggists—those enjoying a high-class trade—are presumed to dispense the purest of the preparations. Those located in middle-class localities take the second-grade, while the lowest, or third grade, is sold to public health departments, hospitals, eleemosynary institutions, and country drug stores, but more especially to the country practitioners who dispense their own medicines. That there should be any but one grade, and that the highest grade of pharmaceutical preparations, is an idea so repugnant to every sense of honesty, decency, and common humanity that the present situation becomes revolting. If, then, we go a step further and consider that class of copyrighted preparations that are dispensed by physicians—the so-called "professional proprietaries"—we discover that the trade interests are absolutely without other restrain than that which is presumed to come from the effects, assumed or demonstrated, of such medicaments on the patients to whom they are administered. In this class of remedies there is not even theoretically a pharmaceutical standard, save as it applies to the ingredients of compounds, and there is now no low that will hold the manufacturers of such remedies to the standard which they assume to establish for themselves.

"To meet this condition the American Medical Association has established a council on pharmacy and chemistry, which is doing voluntarily, in a purely advisory way, what ought to be done by the National Government—namely, analyzing and testing these preparations for the purpose of advising the medical profession, and, for that matter, the public, of their true character. It is obvious, however, that this movement, salutary as it is, can not be sufficiently far-reaching to keep our interstate commerce from being loaded down with preparations, many of which are essentially fraudulent in character. Under these circumstances, I feel that it is important that the council reaffirm its previous action, and by such means as it may select to express its high appreciation of the service which has already been rendered by Senator HEYBURN, chairman of the Senate Committee on Manufactures, and by Mr. HEPBURN, chairman of the House Committee on Interstate and Foreign Commerce, in endeavoring to secure the passage of these salutary laws."

C. S. BACON, *Secretary*.

Mr. HEYBURN. I desire to send to the desk a resolution to be read.

The VICE-PRESIDENT. The Secretary will read it, without objection.

The SECRETARY read as follows:

Resolutions of the New York Young Friends' Association relative to the Heyburn pure-food bill.

To the honorable Senators from the State of New York—Messrs. CHAUNCEY M. DEPEW and THOMAS C. PLATT.

GENTLEMEN: As secretary of the New York Friends' Association, I am directed to forward to you copies of the following resolutions, viz:

Whereas the prosperity and happiness of a nation depends largely upon the health of the people, and the health of the people is vitally dependent upon the purity of the food products and medicinal agents: Therefore, be it

Resolved, That we, the members of the Young Friends' Association of New York and Brooklyn, assembled in regular meeting on the 11th day of the second month, 1906, do earnestly advocate the passage of the bill known as the "Heyburn pure-food bill," which is now before the United States Senate; and be it further

Resolved, That we urge the Senators from this State to use their influence in every way to secure the passage of this bill; and it is further

Resolved, That copies of this resolution be forwarded to Senator DEPEW, Senator PLATT, and Senator HEYBURN.

Dated New York, February 11, 1906.

Respectfully,

PERCY RUSSELL, D. D. S., *President*
HENRY M. HAVILAND, *Secretary*.

Mr. PENROSE rose.

Mr. HEYBURN. I yield to the Senator from Pennsylvania.

Mr. PENROSE. Mr. President, there seems to be some misapprehension, or at least I am laboring under a misapprehension, regarding the status of the two amendments offered by the Senator from Ohio [Mr. FORAKER] day before yesterday. I desire to have the matter clearly defined before the Senate as to the status of those amendments relative to the blended-whiskey question. I understand the junior Senator from North Dakota [Mr. MCCUMBER] offered an amendment, which was accepted by the Senator from Ohio [Mr. FORAKER], and there was some suggestion made at the time that the amendments offered by the Senator from Ohio should be withdrawn. I hope that is not the case, as I am informed that the amendment suggested as a compromise does not meet the requirements of the situation, and in order to have the purposes carried out of those who object to the bill in its present form it is necessary to adhere to the original amendments of the Senator from Ohio and endeavor to have them inserted in the bill.

Mr. FORAKER. Mr. President, I will have in a moment what was said on that subject by looking at the RECORD. Another Senator will find it for me. My recollection is that I offered the amendment which appears in the reprint of the bill on page 11, to strike out in line 8 the word "added;" and to strike out lines 13, 14, and 15, as indicated, and to insert what follows in caps, printed in lines 15, 16, 17, and 18.

It was suggested to me during the progress of the discussion that the purpose of the amendments I had offered would be better accomplished by striking out the word "goods" after the word "proprietary" in line 25, on page 10 of the bill, and inserting thereafter "foods, drugs, or liquors," so as to read "proprietary foods, drugs, or liquors," the purpose of the amendment being to make it unnecessary to put the formula by which these liquors were blended or mixed on the label.

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* * * * *

All I mean, Mr. President, and all this comes to, if it comes anywhere, is that there must be standards and that there must be somewhere authority to establish standards, or there is the gravest possible danger that the bill, full of penalties, full of possible misconstructions, will prove unworkable.

Mr. President, public opinion has taken great strides in the States in perfecting pure-food laws and in administering with very great efficiency pure-food laws. I think there is no State in the country today in which pure-food laws are more efficiently administered than in Wisconsin. Other States have taken very great interest in it. It is so with Minnesota; it is so with the Dakotas. But when this

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Federal law shall have been passed, the danger is that there will be so great reliance in the accuracy and fidelity and administration of the Federal machinery in keeping out of the States all misbranded and adulterated foods, poisons, and the like as to weaken the administration of the State laws.

The necessity for standards has been recognized by Congress heretofore. For the last five years in every agricultural appropriation act there has been an appropriation made containing this language:

> To enable the Secretary of Agriculture to investigate the character of food preservatives, coloring matters, and other substances added to foods, to determine their relation to digestion and to health, and to establish the principles which should guide their use; to enable the Secretary of Agriculture to investigate the character of the chemical and physical tests which are applied to American food products in foreign countries—

Learning more as to what should constitute a standard—

> and to inspect before shipment, when desired by the shippers or owners of these food products. American food products intended for countries where chemical and physical tests are required before said food products are allowed to be sold in the countries mentioned, and for all necessary expenses connected with such inspection and studies of methods of analysis in foreign countries; to enable the Secretary of Agriculture, in collaboration with the Association of Official Agricultural Chemists—

Whatever that is—

> and such other experts as he may deem necessary, to establish standards of purity for food products and to determine what are regarded as adulterations therein.

In every act but the last one that was added for the guidance of the officials of the various States and of the courts of justice. It was omitted in the last appropriation act.

Mr. HEYBURN. Mr. President——

Mr. SPOONER. If the Senator will permit me just to finish this sentence. There have been established standards under this law by the Agricultural Department or its Bureau of Chemistry. There have been by the national association of State food officials, established standards of food products. I am told that in some respects they are not in harmony.

Mr. HEYBURN. Now, Mr. President, if the Senator will permit me——

Mr. SPOONER. Very well.

Mr. HEYBURN. The standards to which the Senator refers and the legislation to which he refers are purely educational. The violation of them is not enforced by any penalty. They are simply laws for the assistance in the way of education of the State pure-food bureaus, that is all, and there is no provision for punishing anyone for violating the rule of the standard. Now, we are seeking to pass a law for protection, not for education.

Mr. SPOONER. Ah, the Senator misses the point. Of course I am obliged to admit (and I am not attacking the bill at all) that there are no penalties connected with this legislation, but the power is given to the Bureau of Chemistry, the same Bureau exactly to which is committed all the power under this bill, to establish food standards.

Mr. HEYBURN. But not to enforce them.

Mr. SPOONER. This bill does not propose to enforce them.

Mr. HEYBURN. Yes; it proposes to enforce a conformity to the standards that are prescribed in general terms, and not specific standards as to each article.

Mr. SPOONER. But, Mr. President, that is just the point. There is no power in the bill for the establishment of standards except as to the Pharmacopœia.

Mr. HEYBURN. When the Senator has reached a point where he can yield I will answer that proposition.

Mr. SPOONER. I yield to the Senator now.

Mr. TILLMAN. Will the Senator from Idaho allow me?

Mr. HEYBURN. Certainly.

Mr. TILLMAN. Mr. President, without some yardstick by which to measure the degree of criminality as shown by the adulteration, I would feel unwilling to trust to the Bureau of Chemistry of the Agricultural Department, or any other bureau, the promulgation of rules and regulations left to them arbitrarily. If they have been already investigating, as the Senator from Wisconsin has shown, I think they ought to be able to furnish the Senate a simple description of what constitutes a wholesome, healthy article of commerce, such as is commonly sold, and we will lay that down in the law and then say that anything which does not come up to that is adulterated, and punish the persons who make it.

I want to suggest to the Senator something that has occurred to me since this debate began. This bill is too crudely drawn and it is too loose jointed. There is too much power placed here in the hands of a bureau for Congress to enact it, and I am going to move sometime or other—or at least I have a very strong inclination that way—to recommit the bill to the committee in charge to get this exact information which has been sought by the Bureau of Chemistry for the last five years, we furnishing the money. Let the basis of criminal action be laid down in the law and let us not leave it to regulations promulgated by Dr. Wiley or the Secretary of Agriculture or anybody else.

Mr. HEYBURN. Mr. President, I am quite certain if such a thing should occur, and we were to bring in a bill fixing the standards, the Senate would never agree to it. We have avoided fixing standards in this national legislation because——

Mr. TILLMAN rose.

Mr. HEYBURN. I ask the Senator just to have patience with me for a moment. He was not here yesterday when we discussed this point. We have avoided fixing standards because nearly every State in the Union has standards of its own, and it would be absolutely impossible to steer clear of a conflict with some of the State standards.

Mr. TILLMAN. Right there, if the Senator will permit me, that is a very queer condition.

Mr. HEYBURN. It exists.

Mr. TILLMAN. Then what difference will it be? As soon as we put this power in the hands of the Secretary of Agriculture or in his subordinates and he fixed standards arbitrarily, with the right to confer with the States, would you not have the same trouble.

Mr. HEYBURN. Will the Senator just allow me right there to say he has been reading the wrong print of the bill.

Mr. TILLMAN. I have been reading the print which is on the desks of Senators.

Mr. HEYBURN. The bill does not put the power to fix standards in the hands of any Department or bureau. It specifically does not. The only power that is authorized to fix standards under the bill is vested in the courts of the United States, there, and only there. The Department, against which much has been said, simply collects the testimony. The three Departments of the Government that are especially equipped for this service are authorized to collect the facts and to report their work to the United States attorney, and if in the judgment of the United States attorney those facts are sufficient upon which to base a prosecution, he for the first time puts the machinery of the law in operation. That machinery of the law is the courts of the United States, and the standard will depend upon the interpretation which the judge of the court sitting with a jury shall place upon the act committed.

Now, I have no doubt at all that in administering this law the judge of a United States court in the district from which the Senator from South Carolina comes would conform as nearly as possible to the rule of standards existing in the community, because every man is primarily supposed to govern his conduct by the recognized standard of uprightness and honesty and fairness of the community in which he lives. He is of course subject to the governing force of the law of the country, but locally the courts would enforce this law according to the standard of morals represented by the State law.

In other words, there is a certain rule of interpretation that has always been observed by the courts, and wherever the State law and the national law can be harmonized the courts will endeavor to do so.

The difference between standards is not so wide as to constitute a crime under the laws of one State that would not be a crime under another. The difference is not so great as to result in that unfortunate condition. They differ in detail. For instance, in the State of Washington alcohol must be branded with a mark upon the package showing the percentage of alcohol. It is a criminal offense to vary from that requirement—that is, to sell alcohol below a certain standard. In this District here there is no requirement. When you buy a bottle of alcohol here it does not appear upon the package what the percentage of alcohol is. Other States have an 85 per cent rule, and so on.

Mr. BAILEY. Will the Senator permit me to ask him a question?

Mr. HEYBURN. Certainly.

Mr. BAILEY. Then does the Senator mean to say that under the provisions of this bill a man could be prosecuted in the Federal courts for having sold alcohol contrary to the law of Washington and be convicted there, and he could not be convicted in the District of Columbia or in the State of Virginia, we will say, in order to make it apply to a State, although he sold alcohol under precisely the same circumstances?

Mr. HEYBURN. He can be convicted under the rule that the court shall hold to pertain, and if the court says that, taking the conditions in this country generally into consideration, this alcohol is not up to the standard of purity because it does not conform to the recognized rule—that is, in the absence of a rule——

Mr. BAILEY. As a matter of fact, [p. 2756] I understand there is no rule established, according to the Senator, and it is left somewhat to the opinion, or we will say to the conscience, of the judge.

Mr. HEYBURN. It would not be under this proposed law, because it describes of what adulterations shall consist; and if a man took alcohol and put 25 per cent of water into it, I do not think the judge would hesitate to instruct the jury that the alcohol was adulterated.

Mr. BAILEY. I understood the Senator from Idaho to say that this bill has established no standard, but left the standard to be established by the court upon the trial of the case.

Mr. HEYBURN. Under the general definition, under the statute.

Mr. BAILEY. Under the general definition. But I understood the Senator to illustrate by saying that in the State of Washington there was one requirement as to the sale of alcohol, while no such requirements existed, to use his own instance in the District of Columbia. I rose to inquire if the Congress was asked to pass a law, a Federal law, which is supposed to be uniform in its operation, under which a citizen could be convicted upon a given state of facts in the State of Washington, but could not be convicted under the same state of facts in the State of Virginia?

Mr. HEYBURN. I will answer that question by inquiring of the Senator what he would do if he were sitting as a judge on the bench in the District of Columbia and a party were charged with selling adulterated alcohol, and it should be shown that it was only 75 per cent alcohol? Would he find any embarrassment in that simply because the statute had not fixed the standard, when it says in terms that the offense shall consist of adding any ingredient which deteriorates the standard of the alcohol?

Mr. BAILEY. Mr. President, judges might differ as to adulteration. For instance, I think the more good water that is put into whisky the less harm it is apt to do; and if I were on the bench I am not perfectly sure, unless I was required to by a plain rule of law to convict and imprison a man for putting good water into bad whisky, that I would ever pronounce judgment against him. That is just exactly what I complain of. If the rule is to be as stated by the Senator, this measure of justice is as variable as the judge's conscience, and I will give no judge the right to imprison any man or to fine any man except in accordance with the fixed rule of law.

When it comes to the facts, they, of course, are of infinite variety, but the law ought to be certain. I believe that Blackstone once observed that the certainty of the law is of more importance than the justice of the law, an opinion which I do not myself accept, and yet that so great an authority should have uttered it must give it great weight.

Mr. HEYBURN. Mr. President, I agree with the Senator from Texas that one of the most valuable attributes of any law is that it shall be certain, or that there shall be the element of certainty in the law—certainty of interpretation, certainty of execution. That represents the highest form of government, an exact measure of a man's right, an exact determination of how far he may go in this direction or in that. This bill is within that rule. This bill is absolutely certain in its definition as to what shall constitute a violation of its provisions. The Senator from Texas knows as well as I do that in the end, recognizing that element and its value, the administration of the law depends in a large measure upon the conscience and intelligence of the judge who presides at the trial and upon the intelligence and conscience of the jury which assists at the trial.

When I made the remark that I did that this proposed law would probably be interpreted within the measure of the spirit of the local statute, I meant that the men who were accustomed to an existing law that was enacted by themselves in their own neighborhood would probably estimate and measure the national law according to that standard. I was not saying that that should be the rule or that under this proposed law there was no other way of proceeding. I was merely commenting on the disposition of human nature as represented by the judges and the juries of the country.

Mr. BAILEY. Mr. President, I see that the Senator is seeking to assimilate the rule in civil cases to this criminal procedure. In civil cases the Federal judges are supposed to administer the local law, but not so in criminal cases. There is no crime against the Government of the United States except such as is made so by Federal statute, and I would marvel at a system under which the Federal rule, which is supposed to be one everywhere, should vary according to local conditions.

Now, the Senator from Idaho must know that down in North Carolina—with the pardon of my friend from that State—it is not supposed to be a very grievous sin against God or a crime against the Government to make moonshine whisky. Surely the Senator would not be willing to see a Federal judge sitting in the State of North Carolina adopt the morals of the moonshine mountaineer. In the mountain district of the good old State of Kentucky, many people there—and good people in their way, too—believe that the Federal Government has no right to impose upon them a tax for making out of their own corn what pleases their own spirits; and it never has been possible to thoroughly enforce the law in any of those mountainous districts where illicit distilling is conducted. According to the Senator's theory of this bill when the Federal judge reaches the district where the mountaineers live—who are said always to be free, and it might be added also that they are never very obedient to authority—he shall adopt the code of morals prevailing in that community; and just across the line, down in the blue-grass region, where my distinguished friend from Kentucky [Mr. BLACKBURN] lives, and where they always obey the law, he will punish them, while up in the other region, so close to his home, they go scot-free, though guilty of the same offense. That is new, and, I may be permitted to say, it is a dangerous as well as a novel doctrine.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the senator from Idaho?

Mr. BAILEY. I do.

Mr. HEYBURN. The Senator's keen faculty for reasoning and drawing deductions has led him far afield from the question out of which this discussion arose. I can readily see how his mind has run along gracefully and glibly to the discussion of a question of that kind, and I would not differ if I had the time to follow him.

I was addressing my remarks when this diversion occurred to the reasons why the committee had not undertaken in this bill to prescribe standards, and I had proceeded so far as to suggest that one of the prime reasons was because of the diversity of State enactments upon these various questions. I suggested, merely in passing, that it might be that the courts would be able to accommodate a general law based upon general rules of interpretation of general application to the local conditions in the States; but I was proceeding to say that each State has a right under the Constitution to regulate business within its own jurisdiction, and if that State, in the wisdom of its legislation, has seen fit to enact a law requiring certain standards in commercial products and business affairs we should not make any law that would enable a manufacturer or a common carrier to deliver within the jurisdiction of the limits of that State any goods or articles that were in contravention of the laws of the State.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Oregon?

Mr. HEYBURN. Yes.

Mr. FULTON: I desire to ask the Senator from Idaho what advantage would there be in the enforcement of this law, so far as liquors are concerned—and I understand that is the matter under discussion—if a standard were established? The introduction of any article containing ingredients of a poisonous or deleterious character is prohibited, it makes no difference what the percentage of alcohol in it may be. It does not seem to me that it makes it any more difficult to enforce the law in the absence of some standard by which you would test the value of the whisky as an article or commodity.

Mr. HEYBURN. I thoroughly agree with the Senator. The establishment of a standard would perform no good office in the administration ot this law or in the protection of the people under it. It might be convenient, if no State had a law on the subject establishing standards, for Congress to enter upon that very elaborate performance. I call it "elaborate" because articles of commerce are of infinite variety, and I can imagine no greater undertaking that this body could impose upon itself than that of attempting to sift down the right and at what point we should stop in fixing this standard. Why, the fixing of freight rates is not to be considered for a moment as a gigantic undertaking in comparison.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the

Senator from Idaho yield to the Senator from Oregon?

Mr. HEYBURN. Yes.

Mr. FULTON. I wish merely to ask the Senator a question for information. I ask if any of the States have established a standard of purity as to intoxicating beverages of any character?

Mr. HEYBURN. Yes; many of them.

Mr. FULTON. Do those standards fix the percentage of alcohol?

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Mr. HEYBURN. They vary; some of them do, and some do not.

Mr. FULTON. Take blended whiskies, for instance. Are these standards as to blended whiskies?

Mr. HEYBURN. I am unable to answer that question as to whether or not there are standards for blended whisky.

Mr. FULTON. I do not pretend to say that there are not, but it is a difficult problem for me to understand how there could be, for blended whisky is a compound, a mixture, as I understand. I can see that there is some difficulty in the application of that word "added," as suggested a while ago by the Senator from Wisconsin [Mr. SPOONER], in the case of a compound. It seems to me that there might be language framed that would more clearly carry out and express the idea of the committee and of the friends of the bill than the word "added." I imagine we all know what is meant by that. The idea is that there shall be excluded from this mixture, from the liquor or the straight whiskey or from the blended whisky, any poisonous ingredient that does not inhere in some one of its constituents, in some one of the ingredients entering into it.

Mr. HEYBURN. I will assist the Senator there by an illustration. You can extract poison from tea or from coffee; you can extract poison from any grain; you can extract poison from many fruits; you can extract poison from the pits of almost any fruit.

Mr. FULTON. I understand that.

Mr. HEYBURN. That is one of the poisons existing in nature's composition.

Mr. FULTON. And yet it may be sold.

Mr. HEYBURN. You can not add to them. You make an ordinary dish of any vegetable that is in common use. The poison is in that vegetable, but not in a poisonous state; it is not an active poison; it is simply a condition out of which a poison can be produced. Now, suppose you would say that because you can extract fusel oil from the grain of your breakfast food that you eat every morning, they should be permitted to add some other poison to it! Suppose you would say if there is poison in it already it can not do much harm to put in more! Suppose commercial cupidity should tempt someone to add to the dormant poison that is in a hundred things that we consume every day, are they to be permitted to do it? This bill says they shall not do it.

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Oregon?

Mr. HEYBURN: Certainly.

Mr. FULTON. I am not hostile to this measure, as the Senator knows. It has no stronger friend than I. I intend to vote for it. I should regret very much were it re-referred, but is it a fact that every ingredient that enters into a compound is added?

Mr. HEYBURN. Yes; but there are words of limitation in the bill.

Mr. FULTON. It may be merely an assembling of certain elements and certain ingredients into one whole.

Mr. HEYBURN. Yes; but there is a limitation on the word "added." It does not prevent you from adding ingredients to combinations or to single substances; it prevents you from adding poisons or deleterious ingredients;

that is all. Those are the words of limitation.

Mr. BAILEY. Mr. President, I do not desire to interrupt the Senator, but when he is through—

Mr. HEYBURN. I will yield the floor to the Senator from Texas.

Mr. BAILEY. Mr. President, this bill is not an attempt to regulate commerce between the States or with Indian tribes or with foreign nations under any proper definition of that term. It is an attempt, so understood by the authors of it and so understood by the gentlemen who support it, to protect the people of the several States against deceptions in trade and against deleterious articles of food and drink. If it were an attempt in good faith to regulate commerce, there could be no doubt as to the power of the Federal Government over it; but as it is intended, understood, and supported for the purpose of protecting the people of the several States against injurious articles of food and drink, it is purely and only an exercise of the police power, and therefore not within the power of the Federal Government.

Mr. HEYBURN. Will the Senator permit me to interrupt him?

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. HEYBURN. In the light of that interpretation of the commerce clause of the Constitution, how does the Senator justify the laws that are in force in regard to shipping diseased cattle from one State to another—the quarantine laws?

Mr. BAILEY. I will come to that. The Senator knows that the court originally held the law of Missouri forbidding the shipment of cattle into that State from below the quarantine line invalid. The Senator also knows that the court has very plainly intimated that it was mistaken in the decision reported in 95 United States. It says, in the Kansas case, I believe, involving a regulation of that kind, that the facts were not presented to the court in the Missouri case. It held the law of Missouri invalid because it provided that no cattle from below this quarantine line, or the infected district, should be brought within that State between March and November, we will say. There was no attempt to prove that cattle from below the quarantine line carried with them under all circumstances the fever curse, but after a larger knowledge had been acquired of the conditions which relate to cattle below the quarantine line, and after it had been established that within certain seasons of the year they can not be brought from a tick-infested district into another without communicating disease, then the court very properly stated in the Kansas case that the facts had not been before it in the Missouri case.

The Senator from Idaho knows that the Supreme Court has said more than once that every State in this Union has the inherent, original, and ample power to protect its people against deceptions in trade and against injurious articles of food.

We now and then hear some Senator suggest that the States can not protect their people against the sale of those injurious articles in the original package. The Senator nods as if he believes that is the law. The Senator from Idaho does not subscribe to that statement of the law, does he?

Mr. President, that arises from the fact that the Senator does not distinguish between the decision of the court in the liquor cases and the decision of the court in the food cases.

In the Plumley case the supreme court of Massachusetts sustained the conviction of a man who had sold oleomargarine manufactured in Illinois and shipped to the State of Massachusetts, where it was sold in the original package. The agent who sold it was indicted under the laws of Massachusetts, convicted in the lower court, and appealed to the supreme court of that State, where the conviction was affirmed. The case was then brought to the Supreme Court of the United States to test the constitutionality of the Massachusetts statute. The Supreme Court of the United States affirmed the judgment of the court below, and held that it was competent for any State in this Union to pass a law prohibiting the sale in the original package of any article injurious to the health of its citizens.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. HEYBURN. That was held to be a police regulation?

Mr. BAILEY. Certainly.

Mr. HEYBURN. And on that ground.

Mr. BAILEY. That is precisely what you are providing for in your bill here.

Mr. HEYBURN. If the Senator will permit the interruption, in this bill we have provided the line of contact at the unbroken package, the jurisdiction of the Government existing so long as goods remain in the unbroken package, and the jurisdiction of the State recognized over it immediately when the package is broken. This bill provides for that.

Mr. BAILEY: The State does not need that provision, because the State has full jurisdiction over it before the package is broken without this legislation.

Mr. HEYBURN. This bill attempts neither to enlarge nor to diminish the rights of the State. We are not concerned in the rights of the State, except in considering that we may not trespass upon them. We have gone no further.

Mr. BAILEY. Mr. President, let us test that. Let us suppose that every State in the Union had an efficient pure-food law, and I certainly hope that every State in the Union will soon have one, because there is no Senator in this Chamber who abhors the rascal that cheats the consumer more than I do. I believe that he ought to be subjected to a fine, and I believe that the man who will sell to the women and children of this country articles of food calculated to impair their health is a public enemy and ought to be sent to prison. No Senator here is more earnestly in favor of legislation against adulterated meat and drink than I am, but I insist that such legislation belongs to the States and not to the General Government, because with the States is left the right to control and the power to control the health and morals of their people. If every State in this Union had an efficient pure-food law, there would be no proposition of this kind in Congress, because it is not that the article is shipped

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from one State to another—that does no harm—it is when the article is sold within a State for consumption by its people that the damage begins.

Mr. HEYBURN. Mr. President——

The VICE PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. HEYBURN. I do not desire to catechise the Senator but I should like to inquire as to his views in regard to the national quarantine laws—whether or not they would come within the same prohibition as he suggests in regard to this law.

Mr. BAILEY. Mr. President, so far as a quarantine law relates to regulation in good faith of the foreign commerce of this country undoubtedly the power of the General Government prevails, but whenever, under the guise of regulating foreign or interstate commerce, the Federal Government attempts to enact a public health law it invades the rights and dominion of the States.

Mr. HEYBURN. I should like to inquire under what provision of the Constitution a quarantine law enacted by Congress may be upheld if not under the provision with which we are now dealing?

Mr. BAILEY. Under the interstate-commerce provision?

Mr. HEYBURN. It is under the police power.

Mr. BAILEY. I will simply, as the easier way, and probably the shorter way to answer, refer the Senator to the repeated decisions of the court. The Supreme Court of the United States has stated over and over again that a State, under the guise of regulating its police affairs, can not interfere with or interrupt commerce among the States. I accept that, and I maintain that the Federal Government, under the guise of regulating interstate commerce, can not take charge of the health or morals of the people of a State.

Mr. HEYBURN. I would ask the Senator if, under the provisions of the Constitution authorizing Congress to regulate commerce between the States, it is not competent for Congress to enact a law for the purpose of protecting any one State against imposition at the hands of another?

Mr. BAILEY. What kind of an imposition?

Mr. HEYBURN. For instance, to enact a law preventing the shipping of poisons from one State to another, or of gun cotton, or dynamite, or diseased clothing, or any other thing that involves a threat against the life or the health of the people. Does not the Senator think that that is commerce—that it is as much commerce as is a lottery ticket?

The VICE-PRESIDENT. The Chair would suggest to Senators that the debate is proceeding under the ten-minute rule. The Chair has liberally construed that rule during the course of the debate to-day. The Senator from Texas has exceeded the ten minutes, but, without objection, he may proceed.

Mr. BAILEY. Mr. President, the Supreme Court has said—and it is received as a wise saying by every lawyer—that, as you approach the line that separates the interstate commerce power of the General Government from the police power of the several States, there is some difficulty in distinguishing between the two. Well, back from that line there is no difficulty. In certain cases it is easy to say this is a police regulation and therefore within the province of the State, and that is a commerce regulation between the States and therefore committed to the Federal Government. But as we go from the acknowledged and palpable exercise of this power by each government and approach the line that separates the two, it is not always easy to mark that line.

Mr. HEYBURN. It is a belt of indecision.

Mr. BAILEY. It must be largely a matter of conscience with a Senator. To illustrate what I mean by saying it is sometimes a matter of conscience with a Senator, let me state a case. A law is proposed in Congress levying a tax upon a given article. No man questions the power of Congress to raise revenue to support the Government, and yet if instead of voting for the bill for the sake of revenue a Senator votes for it for the purpose of regulating or suppressing within a State the manufacture of a given article, I submit that he evades, to put it mildly, the Constitution.

Or, again, if a Member of the House of Representatives chooses to introduce a bill imposing a tax of 25 cents per yard upon every piece of goods manufactured principally of cotton and partly of wool, commonly called "shoddy," any Member who supported that tax for the purpose of raising revenue would be well within his oath to support the Constitution; but if instead of supporting that tax for the purpose of raising revenues I really desired to suppress the manufacture of shoddy in the State of Massachusetts I would be violating my oath to support the Constitution, though I would be doing it in a manner which precluded a judicial inquiry into the question.

In the one case I would be performing a plain function of the Government to raise revenue. In the other case I would be controlling the question of manufacture in a sovereign State of the Union, which Congress is not competent to do, according to all the decisions of the Supreme Court. That doctrine did not begin with the Knight case. The old case of Coe against Errill is, in my judgment, as strong or a stronger case than that of the United States against the Knight Company. In the Coe against Errill case the court went so far as to say that notwithstanding the logs were cut in one State for the purpose of shipment into another State, they did not become the subject of interstate commerce until they had been delivered to the depot of the common carrier.

Mr. HEYBURN. Mr. President—

Mr. BAILEY. Does the Senator now understand that the purpose for which a Senator supports a bill may, and frequently does, determine whether or not he ought to support it at all?

Mr. HEYBURN. I think it usually does.

Mr. BAILEY. Then—

Mr. HEYBURN. But I should like to say to the Senator—

Mr. BAILEY. Then let me put this to the Senator: Is the purpose of this bill to regulate commerce? If so, it is within the power of Congress. Or is the purpose of this bill to protect the health of the people of the several States? If so, that is a question for the States and not for the Congress.

Mr. HEYBURN. I should like to call the attention of the Senator to the provisions of the bill. Its provisions do not attach until the goods are delivered to the carrier. That takes it out of the Coe case. Its provisions do not attach until the goods are delivered for shipment. The provisions of the bill do not apply so long as the goods are in the hands of the manufacturer or factory, but only after they are actually delivered for shipment, which is a part of the process of shipment.

Mr. BAILEY. No bill could apply while the goods were in the hands of the manufacturer.

Mr. HEYBURN. Certainly not.

Mr. BAILEY. Because they are not then commerce.

Mr. HEYBURN. Certainly not.

Mr. BAILEY. The Senator attaches the power of the Federal Government as quickly as he can.

Mr. HEYBURN. That is proper.

Mr. BAILEY. Therefore he need not assume that he has made any concession to the States on that score.

The harm does not come from the shipment of the goods. If they were shipped and never sold or consumed, no harm would be done. Therefore if the Federal Government can only control the question of shipment, the Federal Government has no evil to eradicate, because the evil is after the goods reach the State, and I repeat that is an evil completely within the power of the State to control.

Mr. HEYBURN. It is complete on the line of the States. That line of demarcation is so fine that you can not define it.

Mr. BAILEY. It is, in the minds of some people, but in the minds of some of us the line that separates the States of this Union is as broadly marked as is the duty of a Senator.

Mr. HEYBURN. In sentiment, yes; but I am talking about geographical lines.

Mr. BAILEY. In practice they are not, I regret to say.

Mr. HEYBURN. Part of the cargo on the train may be in one State and a part in another, in crossing the State line.

Mr. BAILEY. The Senator knows—

I assume the Senator knows—that the court has decided that a State can meet what we call contraband goods, if you please, at its border and forbid them to enter. One of the cases was where the court decided that a bale of goods that might bring infection to the people of the State could be forbidden to enter the State and could be burned at the water's edge under the power, sovereign, inherent, original, and complete—

Mr. MONEY. And inalienable.

Mr. BAILEY. And inalienable, as the Senator from Mississippi adds. The Supreme Court gives the Senator warrant for his statement. It says that this power of the State to protect the health of its people not only against injurious food articles, but to protect them against deception in trade, was one originally possessed by the States and was never surrendered to the Federal Government by them, and is one which the Federal Government can not exercise. What is the inspiration of this bill? More than once I have heard it stated in private conversation that the States will not pass these pure-food laws. If it does not please the people of the State of Idaho to protect themselves, they ought not to appeal to the people of Texas, because whenever the people of Texas assert their right to interference with the matter of health and morals in the State of Idaho, they must concede the right of the people of Idaho to interfere in the matter of the health and morals in the State of Texas.

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My own opinion is that the people of every State in this Union can best be left to take care of their own morals and their own health, because they are incomparably more interested in their morals and in their health than are their neighbors in distant States.

Mr. HEYBURN. Mr. President——

Mr. BAILEY. Let me carry that idea one step further.

Mr. HEYBURN. Certainly.

Mr. BAILEY. Some States do not punish murder with the same promptness and exactness that they ought, but shall we say that there ought to be a Federal law on that subject? Some States witness public lynchings upon regrettable occasions. Shall that be a sufficient warrant for the Federal Congress to legislate on that subject? Some States do not punish kidnaping. Perhaps the Senator from Idaho would like to amend the laws of Nebraska so that hereafter kidnapers would pay the penalty of their crime.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. HEYBURN. I certainly would not repeal the extradition law which would enable Idaho to assist any State, whether it be Nebraska or any other, in apprehending a guilty criminal and bringing him to justice.

Now, in regard to the State of Idaho, to which the Senator has referred, I would say that Idaho has a most excellent pure-food law and that it is enforced by a very intelligent officer, and if the State of Idaho can be protected by the assistance of the General Government against the introduction of articles that are contraband in Idaho the laws of Idaho will be much more effective in their results, and that is the object of this bill.

Mr. BAILEY. The State of Idaho does not need the assistance of the Federal Government, because the State of Idaho has complete and ample power to protect herself.

Mr. HEYBURN. Yes; but she is much embarrassed under existing conditions by the introduction in unbroken packages and large shipment of goods that are contraband under the laws of Idaho, and it impossible to surround any State with guards and stop every train at the border and inspect the contents of its cargo. Therefore much expense is added in the maintenance of our government and the enforcement of our laws by reason of the introduction of these contraband articles.

Mr. BAILEY. The senator from Idaho unconsciously betrays one of the reasons which actuate many Senators in supporting this measure. They think to make the Federal Government to bear the expense, but they deceive themselves. After all, the Federal Government has no money to pay these expenses except what it collects from the people of the States; and as it generally costs the Federal Government more to perform a given service than it does the States, the people are merely taking more money out of one pocket than they are putting back into the other, and thus the sum of it all in the end will be an actual loss. If the prosecuting attorneys in the State of Idaho will do their duty, in twelve months there will not be the sale of an illegal or prohibited article of food in that State.

And here, Mr. President, is the miserable condition to which we have come. We are no longer willing to pass criminal laws, and to stop with laying upon the evil disposed the command "Thou shalt not," adding to that command the sanction of a penalty. That used to be sufficient to insure obedience to the law, but is not in this day; and we now feel that we must organize a bureau and subject everybody's business to its inquisitorial power in order to hedge men about that they can not commit a crime, and thus relieve incompetent or indifferent public officials, who are unable or unwilling successfully to prosecute them when they do commit a crime.

What we need in this country is not more bureaus to supervise the business of the people; we need prosecuting attorneys who will put criminals, both great and small, in the pentitentiaries of the land. That is what we need. Give me an efficient pure-food law in any State with capable State attorneys and it will be impossible for people to violate it very long. Put one manufacturer of poisoned food in the penitentiary and the others will hasten to obey the law. One conviction is worth more than a bureau like this.

Begin this way and what will come? Another Post-Office Department. Mr. President, I doubt if there is a despotism on the earth to-day that holds any single man in its dominion, with the same power over the business of its citizens, as the United States vest in the Postmaster-General of this country. He can close any man's business by simply saying that in his opinion it is fraudulently conducted. A clerk, upon an insufficient examination, can order a man's mail discontinued, interrupt the current of his correspondence, destroy his standing in the business community, and the citizen is absolutely without access to the courts to right the wrong. His business can be destroyed, his reputation can be ruined, his profits can be diverted to his competitors; and yet he is powerless to appeal, except to the same officer under whose order he has suffered this great wrong.

Now, undoubtedly it is true that the Government of the United States ought not to allow its service to be employed by scoundrels and cheats, but this way of lodging in the hands of one man the power to destroy the business of many men is un-American. You deny the man whose business is thus assailed resort to the courts of this country. If you take his horse, even for a public purpose, without making him just compensation, he can call you to the bar of justice; but a single individual, responsible to nobody but his own conscience, can destroy a man's business, injure or ruin his good name, and drive him into poverty and disgrace, from a business that he has built up by his industry and sagacity, leaving him without a remedy in the courts. Thus it is that bureau after bureau is built up, and we vest them with such extraordinary power, until the American

Republic will become a bureaucracy instead of a democracy—a government in which the bureaus and not the people rule.

If the Federal Government has the power to pass an act regulating the use of adulterated, misbranded, and deleterious food, it ought to stop when it writes upon the statute books that it shall be a crime to commit such a commodity for shipment between the States or to foreign nations, and leave it to the integrity and efficiency of its judicial officers to vindicate the authority of its law.

Mr. MONEY. Mr. President, in some remarks which I submitted day before yesterday I stated that the convention of certain canning associations at Atlantic City declined to pass a resolution indorsing the Heyburn bill. That was controverted by a written statement made by the president of that convention, which was submitted to the Senate by the Senator from North Dakota [Mr. McCUMBER.] This morning I have had handed me a statement which I desire to have read as a part of my remarks.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

> In view of the statements made by Senator McCUMBER in debate on the pure-food bill, on Monday, February 19, in which reference was made to the recent convention of the various canning associations, held at Atlantic City, N. J., I wish to correct any possible misinterpretation that might have resulted from the Senator's argument. I am the president of the National Food Manufacturers' Association, am a newspaper man by profession, and have been intimately connected with the canning trade for the last twenty years. I attended the convention at Atlantic City unofficially, so far as my relationship to the National Food Manufacturers' Association was concerned. I did not attend the convention for the purpose of securing any resolutions favoring the amendment offered by Senator MONEY in the Senate, and which our association indorses.
>
> Contrary to the statement purporting to have been made by ex-President Frazier, I am an honorary member of each association represented at Atlantic City, and entitled to the floor, if desired.
>
> The following morning after arriving in Atlantic City President Frazier, in his address, asked for a resolution indorsing the Heyburn bill, and all his official and private utterances were to the effect that a resolution should be passed favoring the Heyburn bill. Doctor Wiley was requested to address the association, in order, if possible, to win over any of those who might be wavering in their convictions regarding the Heyburn bill.
>
> Shortly after President Frazier's address I learned that an attempt was to be made by President Frazier to railroad a resolution through favoring the Heyburn bill and cut off all debate by promptly adjourning the meeting thereafter. I at once went to President Frazier and told him that such a resolution could not pass and gave as my reasons for such a statement, first, that the canners did not know the provisions of the Heyburn bill, which would mean a continuation of the miscellaneous condemnation of their product without any hearing or conviction, which would mean commercial suicide to their brands and reputations as manufacturers of legitimate food products. On the basis of this statement I interviewed as many of the members of the association as possible in the short time that was at my disposal, with the result that a resolution was passed, which was framed at my dictation, and which favored no specific bill, notwithstanding Doctor Wiley's presence, and the attitude of President Frazier of the Western Packers' Canned Goods Association. The canners of the United States stand absolutely and unequivocably for pure-food legislation, but the resolution as passed is a striking indication of the feeling of the canners of the United States toward the Heyburn bill. I wish to add still further that Doctor Frazier did not come before Congress with any authority from either association in the matter, and, further, that he is no longer an officer in the association of which he was formerly president.
>
> O. L. DEMING.

Mr. MONEY. Mr. President, as I said, I received that statement this morning, and I have had it read because of the fact that the statement I made previously was derived from newspaper sources and of course you can not always tell whether they are exactly correct or not. When my friend the Senator from North Dakota read the statement of Doctor Frazier, I accepted Doctor Frazier's statement as being substantially correct [p. 2760], but I received this statement this morning, and I wanted to put it into the RECORD, in order that those who have read the other statement may read this, which entirely contradicts it.

Mr. McCUMBER. I wish very briefly to answer the Senator from Texas [Mr. BAILEY].

Mr. President, the Senator from Texas has promulgated a legal doctrine here that I confess I have never before heard stated as a proposition relating to the limitation of the power of the Government under that clause of the Constitution relating to commerce between the States. The proposition of the Senator from Texas is simply that under the Constitution we can regulate commerce, but we can not regulate commerce for the very purpose of protecting the people of the several States against fraud and imposition by the manufacturers of other States. That proposition, I am ready to declare, can find no support in any of the decisions rendered by the Supreme Court of the United States. On the contrary, one of the prime objects in reference to the power of Congress over interstate commerce is to protect the people—not only to protect their pocketbooks, but to protect their lives; not only to protect them against injuries to the person, but also to protect them against fraud of any character.

Let us take the case as it affects the matter of competition. We prohibit any two lines of railroads from entering into an agreement whereby they destroy competition between the different States. For what purpose? Simply because it is an imposition upon the people of those States. It is to protect the pocketbooks of the people against the imposition of improper charges. We justify the power of Congress to appoint a body that shall fix rates by railroads in interstate commerce upon the ground that it will protect the people of the several States against improper charges, against unjust discrimination, against rebates. Every one of them is an element that affects the people themselves.

Now, that is carried out in every decision that has been given by the Supreme Court upon the question of the limitation of the power of the Government over interstate commerce, and I say not a single decision can be found that says or even intimates that we can not regulate commerce between the States for the very purpose of protecting the individuals of the State against fraud sought to be perpetrated by the individuals of another State.

We go further than that. We even go into the State of Ohio or into the State of West Virginia and we say to the coal operators there, "You have made an agreement whereby you are to fix the prices of coal in the several States of the Union." Under the authority of Congress over the interstate commerce of this nation we will condemn that. "Why?" "Because it interferes with free competition." "What harm does that do?" "Because it interferes with free competition, and thus injures the people of the States of Illinois and Ohio and Wisconsin, where those goods are to be shipped." So the very spirit, the whole soul of the power, is for the purpose of protecting the people against any character of imposition.

The Senator says give him a good prosecuting attorney in any of the States, under the authority of the law that may exist in any State, and he can prevent the importation of spurious drugs, etc. I agree entirely with the Senator from Texas upon the limitation of interstate commerce at the dividing line of original packages.

The State can seize the original package the moment it lands, provided that it is a fraud or is not a commercial article. There is the distinction that they make. If it is a commercial article, then the State can not touch it until it has been disposed of for sale and has passed under the State's jurisdiction.

But the police power of the State can take oleomargarine that is colored as yellow butter and sold for yellow butter. It does not need to wait until the original package is broken, because it is designed as a fraud upon the public, and therefore the police power can reach it.

But let us see what the Senator will do, Mr. President, with his district attorney. I will take a State like the State of Ohio, with its hundreds of thousands of freight trains passing through and across it from all sections of the country, every freight train loaded with box after box, with nothing but the name of the consignee upon a box.

This package is dropped off at this city, this package is dropped off at the next station, and 10,000, aye, 100,000 of those packages are dropped off daily and scattered all over the State. They do not show upon the face of them that they are frauds. I admit the State can get hold of them after they have arrived there, but it may be that two-thirds of them, or 90 per cent of them, are fraudulent goods imported from one State to another State. If the Senator had all the State attorneys and every county attorney busy in the State of Ohio, he could not reach 1 per cent of the entire amount of frauds that could be uncovered in a single day in that State.

Thus we desire, Mr. President, to supplement the power of the State. All of the States have their pure-food laws. All of them say "we do not want these articles;" but under the interstate commerce—the commerce from all over the country—these articles are dropping in and scattering over our State, so that an army of State officials could not in any possible way meet them.

Now, how do we supplement it? We come right back to the manufacturer. We say to the manufacturer: "You can not import those goods into a State." That is a power that we have got. We can say to every manufacturer and to every railroad: "You shall not take any fraudulent product into any State," the same as we can say to the authorities the Senator has spoken of in reference to the Post-Office that no fraudulent tickets shall pass from one State to the other.

Mr. President, the Senator would limit this authority to allowing every State to seize the article after it has been scattered daily over 10,000 cities or stations within the State. I can not conceive for one single moment that it is against the power of Congress to so regulate interstate commerce between the States that the very object shall be the protection of the people of that particular State.

I have but one word, Mr. President, to say in reference to the amendment offered by the Senator from Mississippi [Mr. MONEY]. I know the high character and the integrity of the Senator, I know his good judgment, and I do not want him to think for a single moment that I fail to place upon those qualities the highest appreciation. But notwithstanding that I may have the reverence for the Senator from Mississippi that I might have for Isaac of old, I know the hand that reaches out from that association of manufacturers is the hand of Esau. I know the voice that speaks from that amendment prepared from that association of manufacturers is the voice of Jacob, and it is the voice of deception.

The VICE-PRESIDENT. The Senator's time has expired.

[p. 2761]

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Mr. BAILEY. I am sincerely anxious that each State in this Union shall regulate its own domestic concerns without interference or suggestion from the outside, and when each State does that, and all the States do that, we have a harmonious system; we have the system contemplated and ordained by our fathers, a great number of local governments concerning themselves with local affairs, and a great government over them all attending to those concerns which affect them all. Thus, and thus only, can we preserve the ideal created by the founders of this Republic.

When you invade the right of a State on one occasion it is followed by an inevitable invasion on another, and as you increase the power of the Federal Government to do what the States ought to do, the States, becoming unaccustomed to the exercise of their powers, finally become unfit to exercise them. It is as true of a State as it is of an individual that long disuse of a power destroys that power, and if the Federal Government in progressive encroachment upon the rights of the States is to finally deny them the right to safeguard the health and morals of their people, pray, Mr. President, what place have they in our system even as it exists today?

[p. 2762]

Mr. PILES. I wish to ask the Senator a question. If, as he says, the object of my amendment is indirectly covered by the provision on page 8 of the bill, what objection would he have to making explicit the statement on that point?

Mr. McCUMBER. The objection is to the fixing of a standard. I do not know whether the standard should be 25 per cent butter fat or whether it should not be; and I do not know that anyone else here knows absolutely as to that. But the object of the bill is simply to prevent fraud by extracting butter fat or anything else, and I suppose the cream or milk, as long as it is pure, can be sold in the market.

I desire to say one other word in reference to the authorities that were sent to the desk to be read by the Senator from Texas [Mr. BAILEY]. The authorities he cites there do not in any way, as I understand, contravene in the slightest degree the statement I have made. There is no question but that Congress can not reach over into the States and attempt to perform the police powers of the States. The only proposition that I desire to stand upon is that Congress has the power to provide for conditons affecting interstate commerce, so that it may assist the States in the police power of those States. It does not exercise their powers in the slightest degree. It simply exercises the power of Congress over interstate commerce; and if that power is beneficial to the States or assists the States in any way in carrying out the provisions of their own police powers, it certainly cannot be objectionable for that reason.

Mr. BAILEY. Mr. President, the Senator misunderstands the purpose for which I referred to those cases, and for which I had them read, if he supposes that I intended to argue in any way for the abridgment of the interstate-commerce power of the Federal Government. I referred to the Plumley case for the purpose of supporting my statement that a State could protect its people against a deception in trade and against unwholesome articles of food or drink; and I sought to establish the conclusion that as the power of the State in that respect was plenary, it could not be necessary for the Federal Government to pass any law on the subject.

I had the other extracts read for the purpose of showing that the courts have uniformly held that the police power is with the States and not with the Federal Government. If it be received as true that the general police power belongs now, originally, and always, with the governments of the States, then no part of it can be possessed or exercised by the Government of the United States. That argument I made simply for the purpose of submitting to each Senator's conscience whether he voted for this bill to regulate interstate commerce or to protect the health and morals of the people in his State, conceding freely that if the purpose be to regulate interstate commerce, it is a valid exercise of the power of Congress. I insist that if the purpose is to protect the health or morals of the people, then it is a matter that belongs to the States and not to the Federal Government; and that the only way to defend the bill is to contend that it is a regulation of commerce, when we know it is designed as a protection of health.

Mr. McCUMBER. What I insist upon, Mr. President, is that we have the right to say that this is a regulation of commerce, but for the purpose of protecting the citizens of the States against the imposition of certain articles. Now, while the State may exercise its own power absolutely within its own jurisdiction and not without its territorial boundaries, the Congress may exercise its power that will exactly supplement or fit in with the power of the State, provided it keeps within its own jurisdiction, and that is the jurisdiction of interstate commerce. Sometimes there may be a conflict even in the State itself. Thus in the Liquor cases, Congress has the right, and not the State—the primary right—to determine what is a proper article of commerce. The State of Iowa may say, as a police regulation, that beer is injurious to her people and that it shall not be sold in the State of Iowa; but the Supreme Court comes in and says that whenever a question of that character arises—that is, whether an article is a commercial article—Congress must determine that and not the State. Thus in those cases the Supreme Court held the State could not prohibit it, that the police power of the State could not be exercised over the case of beer in the original package, although the State should declare it to be unfit for consumption in that State.

[p. 2763]

Mr. BAILEY. These interruptions and colloquies have not been altogether useless at least. The Senator from North Dakota admits that the Federal Government can not pass police regulations to operate within the State—or for the State. as he expresses it. Of course the Senator could have broadened that statement and said that the Federal Government has no general police power.

I want to bring that principle to apply at this time as a supreme test, and I tell the Senator there is hardly a line in this bill which, under every accepted definition, is not a matter of police regulation. If this bill were pending in the legislature of any State in the Union and its provisions were assailed for lack of authority to pass it, the authority would be found in the general police power of the State. That is the argument which supports it here. It is purely and only a police regulation; and the Senator from North Dakota, with a subtlety that does his ingenuity more credit than it does his candor, continually asserts that it is a regulation of commerce intended to assist the States in ordering their police affairs. Now, it is a rather remarkable circumstance that a regulation of Congress is going to settle the police affairs of a State. If it is a police affair within the State it is a police affair under the Federal law.

Another trouble that the Senator from North Dakota has, and that really explains his ardent support of this bill, is that he is afraid that the frauds are too multitudinous for the States to deal with. He said that in the State of Ohio there were 10,000 cities. There are not that many in the whole United States. But the Senator need have no fear of that. There are 90,000,000 people in the United States, or nearly that number, and most of them are honest men. If they are all going to violate the law, you can not enforce it. In the first place, there would not be enough prosecuting attorneys; and if there were the rascals would constitute a majority of the jury and could turn each other loose. The extent of the frauds need not give the Senator any alarm. While crime is prevalent and cheating is in progress, it is not so widespread as that.

I think the merchants and manufacturers are hardly as bad as they are painted here. It will need only a little while to put the bad ones in jail, and make the others honest as a matter of interest.

The Senator from North Dakota need have no fear that the States of this Union will not preserve the health and morals of their people. If they do not, this system is a failure; and what I reprobate is that every time justice seems to miscarry in a State, they appeal to the Federal Congress for a law. A few great scoundrels in New York, as officers of insurance companies, stole trust funds, and straightway the people come petitioning Congress for a law to regulate insurance throughout the United States; and that, too, in the face of the fact that [p. 2766] the Supreme Court, in a well-considered opinion, concurred in by all the justices, and repeatedly indorsed in subsequent decisions, has expressly decided that insurance is not for Federal regulation. Three or four men stole or dissipated trust funds. That was a crime which ought to have been punished. Those men, perhaps, ought to be wearing stripes and living in prison instead of wearing purple and fine linen and living in palaces. But because a State allows some great rascal to escape is no reason why we should call upon the States to abdicate their powers to the Federal Government.

That is the vice of all these evil times. When something happens in a State not exactly according to the trend of public sentiment, the people rush to Congress, until it will happen after a while that Congress will have so much to do that it will do nothing well. We have nearly reached that time now.

Mr. McCUMBER. Mr. President, the Senator from Texas has discussed in his last address both the legal proposition and the propriety of the legislation. I wish to say but a word further upon the legal proposition, and we come right back to a question which I direct to the Senator from Texas.

Under the authority of Congress over interstate commerce, can we, by a law, declare that any dynamite transshipped from one State to another shall have affixed to the box the word "dynamite?" If we have that power, what power is it? Is it a police power or is it a regulating power? If it is a regulating power, what is the purpose of the regulation? The purpose manifestly must be the preservation of human life; but the preservation of human life comes within the police power. The preservation of human life is governed by the laws of all the States. Yet we may enact, in my candid opinion, a law regulating commerce in dynamite, providing that every box containing dynamite shall be marked "dynamite," and that would be done for the very purpose of protecting the people of the States through which the dynamite is about to pass. It is not an exercise of the police power. It is the exercise of a regulating power, though its object may be and its intendment may be for the protection of human life in the several States, and it may operate to a certain extent as a police power would operate.

As to the merits of the case, as the Senator from Texas has spoken on that subject, I will submit only a few remarks. The Senator says: "Punish some of the persons who are vending these articles in the States, and then there will be no more of it." Take the State of North Dakota. I have here, or did have, a large list, covering many pages of a daily paper, showing the different articles that were misbranded or adulterated in that State. They come from all sections of the United States.

Many of them come from the manufacturers who are mentioned in this organization which is fighting the pure-food bill. Now, suppose you do prosecute one of these retailers. He sends into Ohio or Chicago and orders some maple sirup. He is entitled to get maple sirup. He gets an adulterated article, and when he sells it for maple sirup he has committed no moral offense. Punishing him will not help. You are punishing the innocent for the crime of the guilty.

The best legislation to deal with crime is legislation that will get right at the root of the crime, and if the root of all of this evil is planted in that territory over which Congress has exclusive jurisdiction — the realm of interstate commerce — though its branches reach over into and drop its spurious fruit into every State, the best legislation is the legislation that can reach at it directly and not the legislation that can reach at it indirectly.

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Mr. SPOONER. Mr. President, of course the Senator from Idaho and the Senator from North Dakota must be anxious — and I know they are anxious; I know their good faith — that the bill shall have as much consideration as shall be needed to render its validity as certain as we may render things of the sort certain.

I am persuaded that the lack of standard provided by law, in connection with the offenses denounced in the bill and punished by the provisions of the bill, is very dangerous to it. Of course, the fundamental sections, the jurisdictional sections of the bill, are the first and the second. The first section punishes by a very severe penalty—none too severe, probably—persons who "manufacture, sell, offer for sale, or deliver for shipment, or cause to be delivered, shipped, or transported from within any State, etc., to another State, Territory, etc., any *article of food, drugs, medicines, or liquors which is adulterated or misbranded, or which contains any poisonous or deleterious substance within the meaning of this act*." The second section is substantially the same.

No lawyer will challenge the proposition for a moment that there is an utter lack of standard, except it be supplied in the bill thereafter, and that there is no standard supplied in the bill thereafter except as to drugs. Whether an article is deleterious or not is a question of fact to be determined by a jury. All through the bill there are questions of fact to be determined by a jury. There is no standard rendering definite the offense. There is nothing putting a man on notice in advance of a standard to which he must live and toward which and in obedience to which he must shape his business.

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[p. 2767]

The VICE-PRESIDENT. The question is on agreeing to the substitute submitted by the Senator from Mississippi.

The substitute was rejected.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The VICE-PRESIDENT. The question is, Shall the bill pass?

Mr. HEYBURN. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

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The roll call having been concluded, the result was announced—yeas 63, nays 4, not voting 22, as follows:

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[p. 2773]

1.2a (5) (b) May 7, June 21, 22, 23: Debated, amended and passed House, pp. 6464–6467, 8889–8915, 9005, 9048–9052, 9068–9070, 9075

PRIVILEGE TO CERTAIN BILLS

Mr. HEPBURN. Mr. Speaker, I move to suspend the rules and pass the following order.

The SPEAKER. The gentleman from Iowa moves to suspend the rules and pass the following order.

The Clerk read as follows:

Ordered, That the privilege granted to bills reported from committees having the right to report at any time, be, and is hereby, granted to the following bills:

S. 88: "For preventing the adulteration or misbranding of foods or drugs, and for regulating traffic therein, and for other purposes."

H.R. 18673: "To regulate the immigration of aliens into the United States."

Ordered further, That the bill (H.R. 17984) to provide a code of penal laws for the United States be, and hereby is, made a special continuing order for consideration at evening sessions of the House, whenever the House shall by vote take a recess from the usual hour of adjournment until 8 p.m., the said evening sessions not to continue after 10:30 p.m.

[p. 6464]

Mr. ADAMSON.

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As to the other proposition, my dear friend the gentleman from Iowa [Mr. HEPBURN], chairman of our Committee on Interstate Commerce, has inherited what he calls the "pure-food bill." It is not of his origination. Another man fomented it, and worked on it, and the gentleman from Iowa took it up. Instead of pure food, Mr. Speaker, it ought to be called "pure foolishness." That is what it ought to be named. [Laughter.]

It is a proposition to abolish all legal responsibility; it is a proposition to take up one industry and damn another. We have for eight years, in my experience in Congress, had hearings, and the whole output of the entire investigation has been with reference to prostituting the Federal Government, with its power and its money, to uphold one enterprise and destroy another.

Mr. Speaker, during this time a great many bad things have been developed in the hearings. There is not a solitary case ever developed that is not punishable by local authorities if the local authorities will do their duty. I want to say another thing; there are two or three features in that bill that are not only foolish, but vicious also.

There is one section in that bill that would fill this country with morphine and opium fiends. Read that section. It is a provision that any druggist may supply the customers with a concoction containing 2 grains of opium or one-quarter of a grain of morphine to each ounce whether fluid or solid.

More than that, Mr. Speaker, the bill contains a proposition to go into the regulations of the State and say whether or not you shall put so many ounces into a package. It proposes that if you sell a pound package and it is less than a pound the Federal Government will undertake to correct that crime. It is not only foolish, but illegal. I believe habeas corpus would discharge any man arrested under that provision.

I tell you, Mr. Speaker, the system of this Government as propounded by its founders is that people shall sweep in front of their own doors; that the Federal Government shall not be loaded down with all the domestic affairs, and you know it. The Federal Government was not created for the purpose of cutting your toe nails or corns. We ought to do our duty to the Government and State. There is not in this entire bill a proposition to punish any crime that your own State can not punish, if it will do its duty. All lawyers know it is the duty of the State and the right of the State to perform that part of the functions of government involving police duty. We all know that a venue has to be laid and proved, and if the Federal judges are as honest as the State judges the same requisites are necessary to convict a criminal. Is not that true? There is not in all the hearings for eight years on this pure-foolishness bill a case cited that we can not convict in Georgia or in Pennsylvania or any other State.

I will yield to the gentleman from Georgia [Mr. BARTLETT].

Mr. THOMAS of North Carolina. Mr. Speaker, a parliamentary inquiry?

The SPEAKER. The gentleman will state it.

Mr. THOMAS of North Carolina. I understand these propositions are tied together. We have got to vote for consideration of all of them or against consideration of all of them.

The SPEAKER. The motion is in that form.

Mr. THOMAS of North Carolina. These three propositions to be considered under the proposed order are the pure-food bill, the bill restricting immigration, and the penal code.

The SPEAKER. That is true unless the motion is modified, and it can only be divided by unanimous consent.

Mr. THOMAS of North Carolina. So that we are put in a position we must either vote for consideration of all of them or against consideration of all of them?

The SPEAKER. The gentleman will see that; the motion speaks for itself.

Mr. WILLIAMS. Mr. Speaker, a parliamentary inquiry.

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Mr. BARTLETT.

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As for the other bill, known as the "pure-food bill," I do not deem it to be worthy of the consideration of the House as these other bills are. The bill proposes from its very title to the very last line written in it that the Congress of the United States shall enact purely police laws to govern the trade in certain foods and drugs. The phrase "interstate commerce" nowhere occurs in the title, so the bill itself is nothing more than a bill to enact police laws of the United States for the States of the Union—a thing which in my judgment Congress ought not and can not do. What the purpose of joining these two meritorious measures with the one which in my judgment is not meritorious, one that should not receive the sanction and approval of this House is, I do not know. This I do know; I am not in favor of, and I trust that this side of the House at least will not permit the joining of these two meritorious measures of which most of us are in favor, and I hope that the House will not permit this rule to be passed dragging along with these meritorious measures as it does the other bill which I do not believe we ought to consider or vote for—I mean the pure-food bill, at least not without ample debate. This bill known as the "pure-food bill," inaugurates here in Washington a bureau, another bureau in the Agricultural Department, for the purpose of enabling the Bureau of Chemistry of the Agricultural Department to declare what is adulterated and what is not adulterated food, and to establish standards of foods for all the States. It strikes down with one fell blow all the laws of the States of the Union that have been enacted in behalf and in the interest of pure food and the enforcement of pure-food laws. I do not care to further detain the House, Mr. Speaker. I apprehend all of those Members who have given the matter attention are fully aware of the provisions of the alleged pure-food bill. I desire to state this fact, that the committee from which this bill comes has not yet completed consideration of some amendments that have been suggested. There are some amendments that are very serious and of great importance that are still pending before that committee with a view of reporting them to the House and having them made a part of the bill as committee amendments. We expected to have further consideration in order that the bill, if it shall pass, may be perfected in many particulars.

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Mr. RICHARDSON of Alabama. Mr. Speaker, as I understand, the effect of this proposition, so far as the pure-food bill is concerned, is to restore it to the position of privilege it lost a few days since. I desire to call the attention of the House to the remarks made by the gentlemen from Georgia [Messrs. BARTLETT and ADAMSON] in criticism made upon the pure-food bill. This House, Mr. Speaker, has become accustomed during the Fifty-seventh, Fifty-eighth, and Fifty-ninth Congresses to just such criticisms as those gentlemen have passed upon the pure-food bill.

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Mr. ADAMSON. Will the gentleman from Alabama, who has lost his bearing on this question, yield?

The SPEAKER. Does the gentleman from Alabama yield?

Mr. ADAMSON. I ask that he have order and a respectful hearing.

The SPEAKER. The House will be in order.

Mr. RICHARDSON of Alabama. I say, Mr. Chairman, that these worthy and distinguished gentlemen simply repeat the misapplied theories of States rights to the pure-food bill. There is an express reservation found in section 12 of the bill that it shall not be construed to interfere with commerce wholly internal in any State nor with the exercise of their police powers by the several States, etc.

Mr. ADAMSON. Mr. Speaker——

Mr. RICHARDSON of Alabama. No; I can not yield to my friend at this moment.

Mr. ADAMSON. Just for——

Mr. RICHARDSON of Alabama. I have but five minutes allowed me and I regret that I can not yield further to the gentleman from Georgia [MR. ADAMSON].

The SPEAKER. The gentleman declines to yield.

Mr. ADAMSON. Just a minute.

Mr. RICHARDSON of Alabama. The pure-food bill has been before the House certainly through the Fifty-seventh, Fifty-eighth and Fifty-ninth Congresses, and at last the Senate, that has heretofore taken but little, if any, notice of any bills that have been passed by the House, have passed a bill, and it has come to the House, and we have perfected—if I may be allowed to say—that into one of the best bills probably that we have ever had before the House from the Interstate Commerce Committee, notwithstanding the objection made by the two distinguished Georgians. A pure-food bill passed the House in the Fifty-seventh and Fifty-eighth Congresses, and, with a part of the minority of the members of the Interstate Commerce Committee, I have been an earnest advocate of the passage by Congress of this legislation.

Mr. WILLIAMS. Mr. Speaker——

The SPEAKER. Does the gentleman from Alabama [Mr. RICHARDSON] yield to the gentleman from Mississippi?

Mr. RICHARDSON of Alabama. I yield with pleasure to the gentleman from Mississippi.

Mr. WILLIAMS. The question I wanted to ask the gentleman from Alabama was this: Even supposing his position is perfectly correct in regard to the pure-food bill—assuming that now for the sake of argument—does he think that that would justify coupling three or four bills together in one order, so as to logroll the support of each in support of all? Does he think that this parliamentary device is one which can be indorsed by any of us?

Mr. RICHARDSON of Alabama.

I do not agree to that. I do not think they ought to be coupled together. I am in favor of giving the right of way to the pure-food bill and the immigration bill, but I do not desire to couple with them the bill for the revision of laws.

Mr. WILLIAMS. Very well then. I hope to have the gentlemen understand that we are placed by this order in the parliamentary attitude that if we vote against one of these bills we are bound to vote against the consideration of all.

Mr. RICHARDSON of Alabama. I would like to see them considered separately, if the gentleman desires to know my view in regard to it. If I had my way, I would strike out the bill for the revision of laws and give the other two bills the privilege of being called up.

Mr. Speaker, we were talking about the pure-food bill and its merits, as I understand it. I desire the House to understand that we had uncontradicted and reliable testimony before the Interstate and Foreign Commerce Committee on this one article that there were 60,000,000 gallons of whisky made in the State of Kentucky annually, and that only 15,000,000 of it was pure. The rest is altogether adulterated. This is but a sample of the adulteration of various other food products. Yet gentlemen will say there ought to be no legislation on so important a subject as that of the purity of our food. This bill does not interfere with the honest dealer or manufacturer. And yet the fact remains, Mr. Speaker, that in many of the States where they have undertaken by statutes to regulate the adulteration of food it has totally and absolutely failed to accomplish the desired end. Why has it been a failure? It is simply because, as was so well described before the Interstate Commerce Committee, as was done by a gentleman from Michigan, that he had to prepare different brands or labels for different States where he sold his goods having practically the same statutes, because different State commissioners of food had given different constructions to really the same statute, and this gentleman had to make his cans and his preparations comply with the different constructions made by different State commissioners. What the commerce of the country desires is uniformity in our food standards. This can only be accomplished by Federal legislation.

The SPEAKER. The gentleman's time has expired.

Mr. RICHARDSON of Alabama. Mr. Speaker, I ask three minutes longer from the gentleman from Iowa [Mr. HEPBURN].

Mr. HEPBURN. Mr. Speaker, I yield three minutes more to the gentleman.

Mr. RICHARDSON of Alabama. I say, Mr. Speaker, that it is utterly impossible to enforce the different statutes of the different States on account of the difference of standards in the different States; hence arises the absolute necessity of legislation by Congress for the government of this matter. There are too many different constructions given in the different States to make it practicable to give the public the protection against fraud, deception, and misrepresentation so generally resorted to throughout the country in the matter of the sale of our food products. This bill that we have does not legalize in any improper or dangerous way the sale of opium or morphine or any of that nature of poisonous and destructive medicines, as has been charged. It merely provides, in that important feature, that the quantity or proportion of opium or morphine need not be stated on the label unless the proportion contained in an article is more than the Pharmacopoeia provides; but wherever cocaine is used at all, it is required to be put upon the label. We know that soothing sirups and a great many innocent medicines of that kind that enter into daily domestic use have a certain amount of morphine or opium in them. Would anyone be so unreasonable as to require that to be labeled when it complies with the Pharamacopoeia, as prescribed by the medical fraternity and by the pharmacists, who professionally prescribe these quaitities? It would be a vexatious and unnecessary requirement in opposition to the aim and end of the bill.

Mr. ADAMSON. Mr. Speaker——

The SPEAKER. Will the gentleman from Alabama [Mr. RICHARDSON] yield to the gentleman from Georgia?

Mr. ADAMSON. I think I am within the rule when I ask the gentleman to yield to me one minute.

Mr. RICHARDSON of Alabama. I will yield.

Mr. ADAMSON. I want to ask the distinguished gentleman from Alabama, whom I love and honor as much as any Member of this House, if he can not discriminate between the rights of States and the duties of States?

Mr. RICHARDSON of Alabama. Oh, yes, I have been taught, Mr. Speaker, just as thoroughly as my friend from Georgia, what are the rights of States; and I have been taught at the same time that the Federal Government, in the exercise of its lawful and constitutional functions, has some rights also. I have already referred to the section of this bill that provides that this bill shall not be construed as interfering with any of the police rights of the States. I look at this matter in entirely a different light from my distinguished friend from Georgia [Mr. ADAMSON]. Constitutionally no law can be passed by Congress that usurps the positive and reserved rights of the States, but Congress can pass a law tending to aid and help the States that desire protection from unwholesome, unhealthy, adulterated foods by bringing about uniformity of rules and standards by which the public can be more efficiently protected. Mr. Speaker, I have taken occasion to say on this floor before that I am just as much imbued with the sanctity of rights of the States as anyone on this floor. I do not concede to anyone a greater love and respect than I possess for the rights of the State. I believe in and uphold the exercise of the fullest rights of the State. I believe in the power of the State as to the enactment of its criminal laws and the punishment of its criminals. I believe in the power of the State to protect its people and the lives of its people in the matter of health. I believe in the right of the State to preserve order. All of these questions, it seems to me, are easily understood and applied and can be exercised without conflict with the Federal Government. If the State is unable by reason of impracticable conditions to make efficient its own laws, then the Congress of the United States has the constitutional right to so legislate as to help the State. This bill, if it becomes a law, will not hinder or prevent any State from enacting and enforcing the most drastic laws for the regulation of the sale of adulterated food products. Why, then, should our States rights friends complain?

Mr. HEPBURN. I yield to the gentleman from Pennsylvania [Mr. MOON].

Mr. MOON of Pennsylvania. Mr. Speaker, I rise for the purpose of correcting a misapprehension as to the length of the bill embracing the penal code of the United States. The impression seems to exist here that this bill includes an entire

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PURE-FOOD BILL

The committee resumed its session.

Mr. ADAMSON. Mr. Chairman, I desire to make a request for unanimous consent. The print of the minority report is exhausted. I do not know whether we want more prints or not. The gentleman from Georgia [Mr. BARTLETT], who is absent, drew the minority report, and I ask unanimous consent that it may be printed in the RECORD tomorrow morning, in order that Members may see it.

The CHAIRMAN. The gentleman from Georgia asks unanimous consent that the views of the minority may be printed in the RECORD tomorrow morning. Is there objection?

Mr. HEPBURN. Mr. Chairman, is it competent to do that in the committee?

The CHAIRMAN. The Chair thinks that strictly it should be ordered in the House.

Mr. ADAMSON. Mr. Chairman, then I shall withdraw the request and make it in the House.

Mr. HEPBURN. Mr. Chairman, I yield such time as he may desire to my colleague on the committee, the gentleman from Illinois [Mr. MANN]. [Applause.]

Mr. MANN. Mr. Chairman, I wish, first, to say that although there has been considerable criticism — at least outside of this Chamber—over the delay in the consideration of this bill in the House, that, as a matter of fact, since the bill was reported into the House and was first given a privileged position in the House no bill has been considered by the House except appropriation bills, bills under suspension of the rules, by unanimous consent, or bills on the Private Calendar, except the one bill which was then a continuing order—the bill in regard to naturalization; so that the delay in the consideration of this bill has been caused on account of the unwritten rule of all legislative bodies, I believe, that appropriation bills, when ready for consideration, as a general thing, [p. 8889] are disposed of ahead of all other legislative propositions. But during all this time, Mr. Chairman, I wish to say in justice to the House that I have been constantly assured by leaders of the House that the pure-food bill would have its day in court, would have its chance for consideration by the House before the final adjournment of Congress for this session.

COMPARISON OF SENATE BILL AND HOUSE SUBSTITUTE

Mr. Chairman, Members of the House are interested to know not only what the pure-food bill does, but to know what the difference is between the propositions submitted by the Senate and the propositions submitted by the House committee.

The Senate passed a bill, No. 88, which came to the House, and the Committee in Interstate and Foreign Commerce have reported that bill to the House, striking out all after the enacting clause and inserting a substitute by way of amendment, and in order that the Members of the House may compare the two bills you will permit me to make a short statement in reference to the so-called "House bill," or rather between the House amendment and the Senate bill.

Section 1 of the Senate bill makes it unlawful to manufacture or offer for sale within any Territory, District, or insular possession of the United States adulterated or misbranded foods or drugs, or to ship from any State, etc., to any State, etc., such articles, under penalty of fine and imprisonment.

Section 2 of the Senate bill prohibits the introduction into any State, etc., from another State, etc., of adulterated or misbranded foods and drugs, and provides that any person who shall ship or deliver for shipment such goods from a State, etc., or export the same to a foreign country from a State, etc., to a State, etc., or export the same to a foreign country, or who shall knowingly receive such goods in a State, etc., shall be guilty of a misdemeanor, etc., and provides that violations of sections 1 and 2 by a corporation may be enforced against the officers of the corporation personally responsible for the violation.

Section 1 of the House amendment covers sections 1 and 2 of the Senate bill and provides that the introduction of adulterated or misbranded foods or drugs into any State or Territory, etc., from any other State or Territory, etc., or shipment or receipt of such goods to or from any foreign country is prohibited, and that any person who shall ship from one State or Territory to another State or Territory, or to a foreign country, or receive in one State from another, or who shall offer for sale in the District of Columbia or the Territories adulterated or misbranded foods or drugs, shall be guilty of a misdemeanor and be fined $200 for the first offense, and for a subsequent offense not exceeding $300 or one year's imprisonment, or both, containing a proviso, however, that a person shall not be liable to the penalty of imprisonment unless he knowingly committed the offense charged, and containing the further proviso especially intended for the preparation of certain articles for export, such as meats, that an article shall not be deemed misbranded or adulterated when exported and prepared according to the specifications of the foreign purchaser.

Section 2 of the House bill is almost identical with section 3 of the Senate bill, and provides that the Secretaries of Treasury, Agriculture, and Commerce and Labor shall make rules and regulations for carrying out the provisions of the act and for the collection and examination of specimens of foods and drugs which may be offered for sale in the District of Columbia or any Territory, or offered in unbroken packages in any State where not produced, or received from a foreign country or intended for shipment to a foreign country or submitted for examination by the health or food officers of any State.

Section 3 of the House bill is almost the same as section 4 of the Senate bill, and provides that the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry, or under its supervision, and if it shall appear from examination that any specimen is adulterated or misbranded, the Secretary of Agriculture shall cause notice to be given to the party from whom the sample was obtained, and such party shall be given an opportunity to be heard, and if it then appears that any of the provisions of the act have been violated, the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the analysis or examination, and after judgment of the court notice shall be given by publication.

Section 4 of the House bill is almost the same as section 5 of the Senate bill, and provides that it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of the act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of such violation to commence prosecution.

Section 5 of the House bill and sections 6, 7, and 8 of the Senate bill contain definitions. The Senate bill defines the term "drug," the term "food," and the term "liquor." The House bill includes all under the two terms "drug" and "food," and defines the term "drug" as including all medicines and preparations recognized in the pharmacopoeia or national formulary for internal or external use, and also any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animal. The term "food" is defined as including all articles used for food, drink, confectionery, or condiment by human beings or domestic animal, whether simple, mixed, or compound.

Section 9 of the Senate bill defines what shall be considered as adulteration or misbranding of drugs, confectionery, foods, and liquors.

Section 6 of the House bill defines what shall be deemed adulterations under the act, and provides that a drug shall be deemed adulterated if when sold under the standard recognized in the pharmacopoeia it differs from the standard as laid down therein, or if sold under any other professed standard or quality it differs from the professed standard.

Confectionery shall be deemed adulterated if it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health.

Food which includes both food and drink shall be deemed adulterated if any substance has been mixed with it so as to lower its quality or strength, or has been substituted wholly or in part for the article, or if any valuable constituent has been removed, wholly or in part, or if it be mixed, colored, powdered, coated, or stained in a manner to conceal damage or inferiority, or if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health, or if it consists, in whole or in part, of filthy, decomposed, or putrid animal or vegetable substance, or is the product of a diseased animal.

This section contains a proviso that if food prepared for shipment is preserved by an external application which is necessarily removed in preparation for use, the condition of the food at the time when ready for consumption shall be the test under the act. This is the provision urged by the gentleman from Massachusetts [Mr. GARDNER] as necessary to prevent the destruction of the codfish industry. It may be considered somewhat doubtful whether the proviso has any practical value or effect either one way or the other, as it is doubtful whether any preservative can be used in such manner that it shall be necessarily removed in preparing the food for consumption.

The provision against adulteration of confectionery might properly be extended so as to prohibit the use of spirituous liquors or alcoholic compounds or narcotic drugs in confectionery in any shape.

Section 7 of the House bill relates to the subject of "misbranding" and is the section the provisions of which have given rise to the greatest controversy. It provides that the term "misbranded" shall apply to all drugs or articles of food, or articles which enter into the composition of food, which bear any statement, design, or device on the package or label regarding the ingredients or substances contained therein, or the article as a whole, which shall be false or misleading in any particular; and to any food or drug product falsely branded as to the State, Territory, or country in which it is manufactured or produced; that also a drug shall be deemed "misbranded" if it be an imitation of or offered for sale under the name of another article, or if the contents of the original package have been removed in whole or in part and other contents substituted, or if it fail to bear a statement on the label of the quantity or proportion of alcohol, or of opium, cocaine, or other poisonous substance contained therein.

It is proposed to offer an amendment to this provision, which in effect will provide that the quantity of alcohol or narcotic need not be stated upon a pharmacopoeia remedy prepared in accordance with the pharmacopoeia formulary, but that on other preparations of drugs the amount of alcohol and of opium, morphine, cocaine, heroin, alpha and beta eucaine, acetanilid, and chloral hydrate shall be stated, so that people may be informed who purchase prepared medicines whether they are taking habit-forming drugs or alcoholic compounds.

"Food" shall be considered as adulterated if it be an imitation of or offered for sale under the distinctive name of another article, or if labeled or branded so as to deceive the purchaser, or falsely purport to be a foreign product, or, if in package form the quantity of the contents of the package be not plainly and correctly stated in terms of weight and measure on the outside of the package.

An amendment will be offered to the package provision somewhat modify- [p. 8890] ing the arbitrary provision, but still protecting the purchaser and the honest manufacturer from the fraud of those who wish to cheat and swindle by short weight or measure.

It ought also to be considered as misbranding of food if the contents of the original package shall have been removed in whole or in part and other contents placed in the package, or if the package fails to bear a statement on the label of the quantity or proportion of any of the narcotic drugs.

The section provides that an article of food not containing added poisonous or deleterious ingredients shall not be deemed adulterated or misbranded in a case of mixtures or compounds known as articles of food under their own distinctive names and not imitations, if the name be accompanied on the label with a statement of the place where the article has been manufactured or produced, and also that food shall not be deemed adulterated or misbranded in case of articles labeled, branded, or tagged so as to plainly indicate they are compounds, imitations, or blends, provided that the term "blend" as used therein shall be construed to mean a mixture of like substances not excluding harmless coloring or flavoring ingredients.

Many of the provisions in the House bill and the Senate bill are very similar in reference to misbranding and adulterations, but there are various differences. The package provision in the House bill is not contained in the Senate bill in any form. The provision in the House bill requiring the amount of alcohol and of habit-forming drugs to be stated in medicinal preparations is not in the Senate bill at all. The Senate bill contains the provision in reference to liquors — that a liquor shall be deemed misbranded if it be blended or rectified, or consists of an admixture of different grades of the same liquor, or contains or is mixed with other substances, and the word "blended," "rectified," or "mixed," as the case may be, is not plainly stated on the package in which such liquor is offered for sale, or if the label or any written or printed statement accompanying the package in which the liquor is kept or sold contains any false statement as to the character of the contents of the package, or represents the liquor to be the product of any other country than that in which it was actually produced.

The provision in the House bill which covers the subject of liquor, as well as other articles of food and drink, is that an article shall not be deemed misbranded when labeled, branded, or tagged so as to plainly indicate that it is a compound, imitation, or blend, provided that the term "blend" as used therein shall be construed to mean a mixture of like substance, not excluding harmless coloring or flavoring ingredients.

Section 8 of the House bill is very similar to section 10 of the Senate bill, and provides that no dealer shall be convicted when able to prove a guaranty of conformity with the act, signed by the manufacturer or parties from whom he purchased, but the guarantor must be a resident of the United States. In such case the guarantor shall be amenable to the penalties provided for the dealer.

Section 9 of the House bill makes it

the duty of the Secretary of Agriculture from time to time to fix standards of food products for the guidance of the officers charged with the administration of the food laws and for the information of the courts and to determine the wholesomeness of preservatives and other substances added to foods; and to aid him in reaching just decisions authorizes the Secretary to call upon the committee on food standards of the Association of Official Agricultural Chemists and the committee of standards of the Association of State Dairy and Food Departments, and such other experts as he may deem necessary; and further provides that any person interested in the question as to the wholesomeness of a preservative or other substance to be added to food may require the Secretary to appoint a board of disinterested experts of five members to consider investigate, and report to the Secretary as to the wholesomeness of such articles. The provisions in section 9 of the House bill are not contained in the Senate bill.

Section 10 of the House bill is similar to section 11 of the Senate bill, and provides that any person dealing in foods or drugs covered by the act shall furnish, within business hours, at the ordinary price, a sample to the person duly authorized by the rules and regulations in sufficient quantity for analysis.

Section 11 of the House bill and section 12 of the Senate bill are the same, and provide that any person refusing to sell a sample in compliance with the section of the act requiring it shall be fined or imprisoned. This section also contains the provision that any person guilty of manufacturing or selling adulterated or misbranded articles in violation of the act may, in addition to the penalties provided be adjudged to pay the costs and expenses of inspection analysis.

Section 12 of the House bill provides that the act shall not be construed to interfere with commerce wholly internal in a State nor with the exercise of police powers by the States, but foods and drugs fully complying with its provisions shall not be interfered with by State authorities so long as they remain in original unbroken packages, except as otherwise provided by the United States statutes.

Section 13 of the House bill and of the Senate bill provides for seizing and confiscating adulterated or misbranded articles by process of libel for condemnation.

Section 14 of the act proposes to put in permanent statute the provisions which have been carried in the agricultural appropriation bill for several years, authorizing examinations to be made of imported articles of food and drugs and directing the Secretary of the Treasury to refuse entry and delivery when found to be adulterated or misbranded.

Mr. PADGETT rose.

The CHAIRMAN. Will the gentleman from Illinois [Mr. MANN] yield to the gentleman from Tennessee [Mr. PADGETT]?

Mr. MANN. I yield.

Mr. PADGETT. The gentleman was speaking a moment ago of mixed foods, and I wanted to ask a question for information. There is a class of flour that is calld "mixed flour," in which a portion of corn meal is added to the wheat flour. Would that be prohibited, if it is known to be so, and was published? A great many mills in the country make that class of flour.

Mr. MANN. They make it under a special statute of the United States.

Mr. PADGETT. Would it be prohibited under this bill?

Mr. MANN. It would not be prohibited if they marked it correctly. It would be prohibited to be sold as wheat flour.

Mr. PADGETT. If it is correctly indicated in the sale, it would not be prohibited?

Mr. MANN. That is true. The term

"misbranded" shall apply to all drugs or articles of food which have any false statement, design, or device on the package or the label regarding the ingredients, and to any food misbranded as to State, Territory, or country in which it is manufactured, and will apply if it be an imitation of or offered for sale under the name of another article, etc. There are various provisions in reference to misbranding. One of the provisions is in reference to the weight and measure of the contents of the packages, which has given rise to considerable controversy, and which I hope to explain more fully later on. A committee amendment will be offered to the provision of the bill which we think, while modifying the arbitrary provision of the House amendment, will still protect the purchasers and the honest manufacturer from the frauds of those who wish to cheat and defraud by short weight or measure.

PROVISIONS AS TO WHISKIES

Another provision which has given rise to considerable controversy, at least out of the House, is the one which affects whisky. We found that there were two antagonistic interests involved in the whisky question. One was those who wished all whisky sold, as far as possible, to be the whisky as it came from the still after being aged; the other was the interest which wished to drive out of business, practically, the pot distilleries, and would require the whisky in the market to be made by so-called "rectification" or other processes, out of ethyl alcohol, pure alcohol with the addition of coloring or flavoring matter. The committee did not take a decided stand in favor of either of these interests against the other, but leaves each to stand upon its own foundation, upon its own merits, but requiring that the so-called "rectified" whiskies shall bear upon their label the statement that they are imitation, compounded, or blended, so that the purchaser may know when he buys that class of goods that he is not obtaining whisky as it came from the pot still, simply by aging in barrels or otherwise. We were asked on one side to adopt an amendment which would have put out of business the straight-whisky manufacturers; and we were asked on the other side to adopt an amendment which would have put out of business those who mix or blend the whisky. We did not recommend and have not recommended a proposition upon that point as either side requested, thinking it was not the duty of the committee to recommend to Congress legislation which would determine what people should either eat or drink, but rather to recommend legislation which would permit people to know what they are eating or drinking. [Applause.]

[p. 8891]

PURE-FOOD LEGISLATION

Mr. BENNET of New York. Mr. Speaker, I ask unanimous consent to print in the RECORD an opinion of the attorney-general of the State of New York on pure-food legislation.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The opinion is as follows:

[p. 9005]

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PURE-FOOD BILL

The SPEAKER. Under the special order of the House is in the Committee of the Whole House on the state of the Union for the further consideration of the pure-food bill, and the gentleman from New Hampshire [Mr. CURRIER] will take the chair.

Mr. CURRIER took the chair.

Mr. MANN. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend page 16, line 5, by striking out the word "all" and inserting in lieu thereof "any of."

Mr. MANN. Mr. Chairman, 'that amendment is offered at the suggestion of the gentleman from Missouri [Mr. DE ARMOND] to correct what might be an ambiguity in the text. I ask for a vote.

Mr. KEIFER. Do I understand the gentleman has concluded offering amendments at the instance of the committee?

Mr. MANN. Well, I have another amendments at the instance of the the committee, I will say to the gentleman.

Mr. KEIFER. I just wanted to be sure about that.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken; and the amendment was agreed to.

Mr. MANN. I offer the following amendment.

[p. 9048]

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend page 27 by adding at the end of section 15: "The word 'person' as used in this act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association within the scope of his employment or office shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the person."

Mr. MANN. Mr. Chairman, that amendment simply defines the word "person" in the act, so as to include corporations, companies, associations, etc., and also that the officer, agent, or other person acting for the corporation shall be guilty within the scope of his employment as well as the corporation itself.

Mr. BARTLETT. Mr. Chairman, I desire to ask the gentleman to inform me what part of the bill this amendment proposes to amend?

Mr. MANN. This is to amend at the end of section 17; to insert at the end of section 15, page 27.

Mr. BARTLETT. May I ask to have the amendment read again?

The CHAIRMAN. Without objection, the amendment will be again reported.

There was no objection.

The amendment was again reported.

Mr. BARTLETT, Mr. Chairman, the gentleman from Illinois [Mr. MANN] has just offered an amendment which proposes to extend the scope of this bill in the way of creating additional objects for criminal prosecution in the Federal courts. While very innocent looking, this amendment will furnish full opportunity for the hundreds of inspectors and spies that are to be employed under this act to harass, annoy, and persecute the people of this country.

Mr. Chairman, I oppose this amendment, because it is an effort on the part of the General Government to undertake to enforce police laws, a power which the General Government does not possess except in the District of Columbia and the Territories; and in those portions of the territory of the United States over which the States have exclusive jurisdiction the United States has no police power to be exercised in the States. Of course, what I say in reference to that may with equal force be applied to the main provisions of this bill, and, in fact, might be applied to the entire bill, except that part of the bill which proposes to make crimes and offenses in the District of Columbia and the Territories.

Congress has no power or authority to seek to enforce police regulations within the States; the duty of protecting all its citizens in the enjoyment of equality of rights; to impose restraints and burdens upon persons and property in the conservation of public health, good order, and prosperity was originally assumed by the States, and it remains there; it always belongs to the States; this power of the States was not surrendered to the General Government, and is essentially exclusive in the States.

The views of the minority of the Committee on Interstate and Foreign Commerce of this House were presented by myself on March 14 last, and have been printed in the RECORD of yesterday. In those views I have collected and cited the numerous decisions of the Supreme Court of the United States, and quoted in full from those which fully sustain the propositions I have stated. This bill, as it comes from the committee, is based upon the idea that because the police laws of the States may not be satisfactory, or because they may not be forced to the satisfaction of all, therefore the Congress of the United States should invade the States and do that which, up to this hour, it has never been able to do—enact laws to prevent frauds, impositions, and adulterations of foods in the States; a power which Congress does not possess, never possessed, and one that this act will prove futile to establish. This duty belongs exclusively to the States, and from the evidence produced before our committee the States are performing this duty efficiently, and those who chiefly seek this legislation are the food manufacturers who have been compelled to obey the State laws on the subject of pure food. These manufacturers clamor for a national law which shall be "uniform," and which will permit them to override and annul the various State laws on this subject. I do not believe that Congress can so legislate as to prevent the States from protecting the people of the States from frauds or imposition in the matter of foods, and being of that opinion I can not support this bill.

That I may not be regarded as having made a statement which is unsupported by authority, I will call attention to some of the decisions of the Supreme Court of the United States.

* * * * *

The first is the case of Plumley *v.* Massachusetts (155 U. S., p. 461). The opinion of the court was delivered by Justice Harlan, in which there was a dissenting opinion read by the Chief Justice, Justice Field, and Justice Brewer.

I quote from the opinion:

> If there be any subject over which it would seem the States ought to have plenary control, and the power to legislate in respect to which it ought not to be supposed was intended to be surrendered to the General Government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one State to another State.
>
> But that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the States. For, as said by this court in Sherlock *v.* Alling (93 U. S., 99, 103): "In conferring upon Congress the regulation of commerce it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. And it may be said generally that the legislation of the State not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

In the case of Crossman *v.* Lurman (192 U. S.) the Supreme Court of the United States, without dissent from any judge, while Chief Justice Fuller and Justice Brewer were still upon the bench and participated in the hearing and decision, upheld the case of Plumley *v.* Massachusetts (155 U.S.).

In the opinion we find the following:

> The power of the State to impose restraints and burdens upon persons and property in the

conservation of the public health, good order, and prosperity is a power originally and always belonging to the States, not surrendered by them to the General Government, nor directly restrained by the Constitution of the United States, and essentially exclusive. It is not to be doubted that the power to make the ordinary regulations of police remains with the individual States, and can not be assumed by the National Government.

The court also said:

that legislation forbidding the sale of deceitful imitations of articles of food among the people does not abridge any privilege secured to citizens of the United States, nor in a just sense interfere with the freedom of commerce among the several States. It is legislation which can be most advantageously exercised by the States themselves.

[p. 9049]

The court cite the Plumley case with approval, and said:

Indeed, every contention here urged to show that the law of New York is repugnant to the Constitution of the United States was fully and expressly considered and negatived by the decision of this court in Plumley *v.* Massachusetts, supra. In that case the law of the State of Massachusetts forbidding the sale of oleomargarine, which was artificially colored, was applied to a sale in Massachusetts of an original package of that article which had been manufactured in and shipped from the State of Illinois. In the course of a full review of the previous cases relating to the subject, it was said, page 472:

"If there be any subject over which it would seem the States ought to have plenary control, and the power to legislate in respect to which it ought not to be supposed was intended to be surrendered to the General Government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one State to another State. But that circumstance does not show that laws of the character alluded to are inconsistent with the powers of Congress to regulate commerce among the States. For, as said by this court in Sherlock *v.* Alling (93 U.S., 99, 103): 'In conferring upon Congress the regulation of commerce it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution.

"'And it may be said generally that the legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.'"

Again it was said, page 478:

"And yet it is supposed that the owners of a compound which has been put in a condition to cheat the public into believing that it is a particular article of food in daily use and eagerly sought by people in every condition of life are protected by the Constitution in making a sale of it against the will of the State in which it is offered for sale, because of the circumstance that it is an original package and has become a subject of ordinary traffic. We are unwilling to accept this view. We are of opinion that it is within the power of a State to exclude from its market any compound manufactured in another State which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The Constitution of the United States does not secure to anyone the privilege of defrauding the public."

Most of the States have enacted pure-food laws and enforce them. There is no necessity existing, even if the plea of necessity could justify Congress in endeavoring to enact police laws for the States.

As proof of this assertion I call attention to the testimony before the committee on that subject. I quote from the hearings:

Mr. BARTLETT. Most of the States, if not all, have what they call pure-food laws, and most of them have commissioners—how many of the States?

Doctor WILEY. Nearly all the States have food laws, and about twenty, or perhaps a few more, of them have provided for the enforcement of those laws. The others are just laws without any methods of enforcement; and in so far as I know, in those States the laws are not enforced. But where the law provides for a machinery to enforce the law, in most States it is enforced very rigidly. That is all brought out in this statement.

Mr. BARTLETT. That is what I want. So you say that where they have adopted these food laws and appointed food commissioners or officers to watch the enforcement of them, they are enforced very properly?

Doctor WILEY. Yes: very efficiently, as far as the State can go. And I will say this, Mr. Chairman, that in every State, I believe, where the

> an act of the legislature, I believe in every other case these standards have been adopted by the food commissioners in toto.

This witness is the Chief of the Bureau of Chemistry of the Department of Agriculture and has had more influence in bringing about this legislation probably than any one man, he in fact aiding in drafting the House bill we are now considering.

Mr. Chairman, I am not authorized to speak for any other State, but I do know that the State of Georgia has enacted laws for the protection of her people in the matter of foods; and I assert that we have enforced those laws in the past and will continue to do so in the future without the assistance, interference, or aid of the Federal Government. We claim the right reserved to our State to protect the health of the people of Georgia by our own State laws and to enforce those laws in our own courts against everyone whether they be citizens of the State or whether they reside in other States. On another occasion I referred to the laws of Georgia on this subject, and I now repeat what I then said:

> The State of Georgia has a number of laws upon her statute books in the interest of pure food and against the selling of falsely branded goods, adulterated goods, or impure food.
>
> These laws can be found, commencing with section 450 of the Criminal Code of Georgia, of 1895, in article 16 down to and including section 480 of article 17.
>
> It may not be amiss to call attention to some of these provisions in the Georgia Code.
>
> Section 456 prohibits the sale or offering for sale of any unclean, impure, unwholesome, or adulterated milk.
>
> Sections 457, 458, and 459 prohibit the sale of imitations of butter and cheese as butter and cheese.
>
> Sections 459 to 465 prohibit the sale of any article designed to be used as a substitute for food products, except as they shall be marked and branded as such substitutes.
>
> Sections 446 to 468 punish the sale of unwholesome provisions, unwholesome bread, drink, or pernicious and adulterated liquor.
>
> And it is made the duty of the grand juries in the several counties to specially inquire into all the violations of these laws and make presentments against the violators of these laws.
>
> The whole of article 17, containing section 470 and sections following to 484, inclusive, prohibits the sale of adulterated and impure drugs, and prescibes penalties for the violations of these provisions.
>
> Upon an investigation of these laws of Georgia, as contained in these sections, it will be seen that the State of Georgia has made ample provision for the protection of its people from imposition and injury from the sale of impure food, adulterated food, food products, and adulterated drugs. The grand juries of the State courts in Georgia are intelligent and upright men, and can be depended upon to indict violators of the law; and the trial juries are intelligent and honest, and as efficient in the enforcement of the law as the juries in the Federal courts. So far as Georgia is concerned there is no necessity for this bill.

Mr. Chairman, I had intended when this bill was up for general debate, had I been present, to undertake, even though it might have been a futile and useless undertaking, to call the attention of the House to the reasons why the bill should not become a law, except as it may affect the District of Columbia, the Territories, and those places over which the United States has exclusive jurisdiction. I was absent necessarily. I do not intend now, even if the committee was kind and gracious enough to permit me to do so, at this stage of the session or this stage of the consideration of this bill to detain the committee with those views. I have very decided views upon the subject. I have undertaken to put them in the minority report that was presented, and the House has had them printed. Even at the risk, Mr. Chairman, of being laughed at or scoffed at for making the statement that many of the provisions of this bill in my judgment violate the fundamental law of the land, I will repeat that statement, which I have endeavored to sustain by the decisions of the courts, even at the risk of being criticised and held up to the House and the country as a constitutional lawyer, a claim which I nowise make—I will insist that this bill violates the Constitution of the United States. But I console myself, Mr. Chairman, when that criticism is made upon those of us who assert that the

Congress of the United States can and does, and has many times enacted laws—

The CHAIRMAN. The time of the gentleman has expired.

Mr. BARTLETT. Mr. Chairman, I ask for five minutes more.

Mr. ADAMSON. Mr. Chairman, I ask that the gentleman may have permission to conclude his remarks.

The CHAIRMAN. The gentleman from Georgia [Mr. ADAMSON] asks that his colleague [Mr. BARTLETT] may have time to conclude his remarks. Is there objection?

Mr. PAYNE. There are other important amendments, and we have to debate some of them. I object.

Mr. ADAMSON. Mr. Chairman, then I ask that my colleague may have fifteen minutes.

Mr. BARTLETT. No, sir; I am a member of this committee which reported this bill. I do not ask any indulgence. I was absent from the general debate necessarily—the first time I have been absent from the House in years.

Mr. ADAMSON. Mr. Chairman, I think the gentleman ought to have time.

Mr. KIEFER. Mr. Chairman, it is outside of the limitation of time.

Mr. BARTLETT. I do not desire any indulgence either from the gentleman from Ohio [Mr. KEIFER] or the gentleman from New York [Mr. PAYNE].

Mr. PAYNE. Mr. Chairman, I ask that the gentleman have five minutes.

The CHAIRMAN. The Chair would state that at ten minutes of 4 o'clock the committee must rise and report the bill to the House.

Mr. MANN. Mr. Chairman, I will ask the gentleman from Georgia how much time he desires.

Mr. ADAMSON. Will the gentleman from Illinois [Mr. MANN] allow me one suggestion?

Mr. BARTLETT. I will consume but five minutes more.

Mr. MANN. Mr. Chairman, I move that the gentleman from Georgia may have ten minutes.

Mr. BARTLETT. I want but five minutes.

The CHAIRMAN. The gentleman from Illinois [Mr. MANN] asks unanimous consent that the gentleman from Georgia may have five minutes. Is there objection?

There was no objection.

Mr. BARTLETT. Mr. Chairman, I have served some years in this House. I have never been absent in a debate on any great question, or any question at all, at any time, except when it is impossible for me by reason of physical disability of some kind to be here. And I appreciate the courtesy of my friend from Illinois [Mr. MANN] who asked permission for me to speak for five minutes longer, and I appreciate the courtesy of the gentleman from New York [Mr. PAYNE] who has objected.

[p. 9050]

Mr. Chairman, as I started to say, it does not affright me at all because gentlemen may criticise those of us who stand up and assert that the United States Congress has its powers limited by the Constitution and that there is legislation it can not enact. Those who occupy the position of critics and carpers at us who thus believe, and who criticise us as constitutional lawyers, do not affect my opinions. I might retort, Mr. Chairman, that some of those who make those assertions are neither constitutional lawyers nor any other kind of lawyer. [Applause on the Democratic side.] But, Mr. Chairman, fortified as I am, or as I believe I am, in my opposition to some of the provisions of this bill by the decisions of the Supreme Court of the United States, I make bold to place my feeble opinion and vote against the current of hysteria which seems to be sweeping all over the country and which has for its purpose in its wild moments the destruction absolutely of the powers of the State governments and of all government except that asserted to be possessed by the United States Congress; and I shall oppose this endeavor, unlawfully as I maintain, to carry out that purpose to centralize all power in the Federal Government.

I hold in my hands the decisions of the court in reference to the subject of food and food products, in reference to the power of the States to protect the health of the States and the morals of the people of the States; which declare that the States are supreme and no power of Congress can take away that supremacy or destroy it; nor can Congress assume to enact and enforce within the States laws which are solely the exercise of the police powers. The General Government has no police power within the States, and all efforts to confer such power must fail, else we have arrived at that period in the history of this confederated Republic when all power has been federalized in one single government, when the old-time idea of independent and sovereign States are but a memory of the past.

For myself I do not desire to interfere or to take them away, these rights of the States, and I will not be found joining with those who desire to destroy them.

Before I conclude I want to call the attention of this House to a statement made by the Speaker of this House in a speech delivered by him at the beginning of this year to a Republican club in the city of Philadelphia. Coming from the sage statesman who fills that chair, a man of long experience in public affairs and in this House, I desire to put it in the RECORD so that the country may know the views that he has upon this subject and the efforts now being made to centralize all power in the Federal Government. I quote from that speech. Said Mr. CANNON:

> ### REPUBLIC'S GREATEST DANGER.
>
> **In my judgment the greatest danger to the Republic comes from the citizen who refuses or neglects to participate in governing in local, State, and national affairs and seeks protection from the government to which he does not contribute according to his ability or means. In my judgment the danger now to us is not the weakening of the Federal Government, but rather the failure of the forty-five sovereign States to exercise, respectively, their function, their jurisdiction, touching all matters not granted to the Federal Government. This danger does not come from the desire of the Federal Government to grasp power not conferred by the Constitution, but rather from the desire of citizens of the respective States to cast upon the Federal Government the responsibility and duty that they should perform.**
>
> **If the Federal Government continues to centralize we will soon find that we will have a vast bureaucratic government, which will prove inefficient if not corrupt. [Loud applause.]**

I commend the wise words of our distinguished presiding officer to Republicans and Democrats alike. Let us aid him in halting the onward march to centralization and bureaucracy—let us preserve our Republic from inefficiency and corruption.

In vain will those who assert the doctrine search the pages of the Constitution find one word that authorizes the Congress of the United States to exercise police powers within the domain of the State. Equally futile will be the effort to find a decision to authorize it.

Mr. Chairman, the States of this Union, the most of them, have enacted pure-food laws, and they enforce them, at least to the satisfaction of their citizens. From the evidence before the Committee of Interstate and Foreign Commerce, of which I am a member, it appears these laws are being enforced in the States; and to the States under the Constitution is granted the power, and not to the General Government, to protect its people in its health, its morals, and general welfare. Against the prostitution of the Constitution which would rob the States of this power, or usurp it, I enter my sincere and earnest protest [Loud applause.]

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. BARTLETT. Mr. Chairman, I ask permission to extend my remarks in the RECORD.

There was no objection.

Mr. HINSHAW. Mr. Chairman, we have in our State a law on the subject of food, but it is not a very perfect statute. The history of the country and all our experience to-day shows that Federal supervision of all matters that pertain to the entire people of the country and to all the States is far superior in its efficiency to any single State supervision. It is the experience in our own State, where we have a food commissioner, whose duties are largely to attend to the sanitary conditions of butter and cheese, cider, and a few other products. Our food commissioner recently issued a bulletin. After an examination of forty-five different products, he found that only twenty of the products which he examined were pure, the other twenty-five being adulterated. In his bulletin Mr. Redfern, our food commissioner, says:

Particular attention has been paid to the spices found on the market.

I was interested in the statement of the gentleman from Illinois on the subject of spices the other day.

The Omaha World-Herald says:

> Twenty pure food products have been discovered by Deputy Food Commissioner Redfern in the forty-five samples he has analyzed during the last three months. The other twenty-five samples were found to be adulterated and, colored with such delectable substances as gypsum, sulphites, borax, glucose, coal tar, saccharine, and aniline dyes. The following is Mr. Redfern's bulletin:
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> "In the present bulletin of the commission some attention has been paid to the condition of spices found on the market. It is surprising that gypsum is used in such large quantities as an adulterant; in one case as much as 16 per cent was used. Ginger and cayenne pepper seem to have more of this inert substance added to them than any of the other spices. Turmeric, one of the ingredients of curry powder, is nearly always used with gypsum in gingers, owing to the fact that its intense yellow color will hide the presence of the gypsum, which would otherwise give the ginger a pale, suspicious color.
>
> "A few samples of canned meats were analyzed and all found to contain borax or sulphites or both. Sulphites are injurious, and of borax Doctor Wiley, of the United States Department of Agriculture, says: 'Borax when continuously administered in small doses for a long period or when given in large quantities for a short period creates disturbances of appetite, of digestion, and health.' Of the fruit products analyzed the majority were found to be imitation products, colored to represent the fruit, and composed of starch and glucose. In a sample of pineapple preserves glucose formed the bulk of the product, with saccharine added as a sweetener. This artificial sugar is made from aniline, and as it is from 300 to 500 times as sweet as cane sugar, it is often used as a substitute. It has no food value, and passes through the body unchanged. A sample of strawberry pop was found to be colored with analine dye and sweetened with this saccharine. The drinking of such mixtures should be discouraged.
>
> "Out of six samples of cream of tartar bought on the market three were found to be composed of a large percentage of starch and phosphates. These mixtures sold for the same price as the pure tartar. Such practices are certainly fraudulent, for when the consumer calls for cream of tartar the law should see that he gets it and not a cheap mixture of tartar, starch, and phospate of lime. A deplorable condition was found in the case of the cayenne pepper. Out of eight samples, six were colored with analine dye and adulterated with gypsum. It is hoped that our next legislature will see fit to pass a law that will stop such wholesale adulterations or at least compel the articles of food to be properly labeled, so that the consumer will know what he is buying. The pure-food question has been taken up by many of the women's clubs throughout the State, and it is desired that they ask their representatives and senators to the coming legislature to support a law which will give the State jurisdiction over all classes of food products, many of which at the present are badly adulterated."

The history of all these matters shows that the State is never able properly to control the adulteration of food products designed for interstate commerce, and that the great arm of the Federal Government alone will be able to supervise the manufacture and sale of those food products in all of which we are so vitally interested. [Loud applause.]

Mr. GAINES of Tennessee. Mr. Chairman, I want to make a few remarks about the purposes of this bill and discuss the power of Congress to control interstate and foreign commerce and the power of the States to control local or State commerce. I shall vote for this bill, amended the best we can, because it is the best that we can now pass, and certainly, I think, something should be done to help the cause of pure food and to aid the States in enforcing their pure-food laws.

If Congress prohibits the shipping into a State or Territory of impure foods, it will lessen the burdens of and aid the States and Territories in enforcing their pure-food laws. It will prevent the evil, to a large extent, from coming into the State and Territory, and thus the State and Territorial laws can be more easily and perfectly enforced. With this view in mind, I shall support this bill and try to make the pending bill a better one as we proceed.

Congress has complete power, "plenary power," as the Supreme Court has repeatedly held, notably in the Addyston Pipe Trust Company, to "prohibit" obnoxious interstate or foreign commerce. We prohibited foreign commerce by the embargo acts in the days of Jefferson and at other times. We prohibited whisky being shipped to the Indians. We prohibited a great many objectionable products being shipped from one State to another under laws based on the commerce clause of the Constitution. We prohibit monopolies in Federal commerce. We prohibit contracts made in Federal commerce, by which obnoxious trusts and combinations are made, and the Supreme Court passed on this very question in the Pipe case. My understanding [p. 9051] is that this bill has been based as completely as possible on this commerce clause, which gives to Congress the right to "prohibit" or regulate Federal commerce, which includes the right to cause it to be prepared to be shipped in its pure and proper state from one State to another, etc.

I do not disagree with a single proposition of the law, that I recall, announced by my friend from Texas [Mr. HENRY] yesterday.

I think he misapplied the law to the particular case now in hand, to wit, this bill. Local, domestic, or State commerce is completely under the control of the several States. Federal commerce—that is, interstate and foreign commerce—when Congress does not act, may be curtailed by the States, in so far as it is obnoxious to the police laws of the States; but where Congress takes complete control of the Federal commerce, the States can not take charge of and control that same commerce and why? Because Congress has taken complete control; the two authorities are then in conflict, and, by the very words of the Constitution, the Federal law is the supreme law of the land. The Congress may abuse this power. So may the States. These powers exist, but should be wisely exercised always.

Now, Mr. Chairman, I shall not quote any law. I have not the time nor has the committee the time for me to do that. I shall content myself with referring the House to a very pertinent opinion of the Supreme Court of the United States, reported in 154 United States Reports, page 209, in the case, Covington Bridge Company *v.* Kentucky, where the commerce powers of Congress and the States are fully discussed by Mr. Justice Brown. In that case the court distinctly declares, first, that the State commerce is controllable by the States only, except, of course, such incidental interference as is absolutely necessary to execute some express grant of power given to Congress; the second class of commerce is that Federal commerce which may be obnoxious to the morals and health of the State which the States can police when Congress has failed in part or entirely to take charge of and regulate, and the third class is where Congress takes complete control of the Federal commerce and regulates it. It is these three classes that are alluded to by Mr. Justice Brown in this very elaborate opinion.

Mr. GARRETT. Will my colleague allow me to ask him a question?

Mr. GAINES of Tennessee. Certainly.

Mr. GARRETT. Do you think it will aid the States to enforce the police power to provide expressly that they shall not interfere with a package branded according to the rule set up by the Department in this case?

Mr. GAINES of Tennessee. I made an inquiry about that yesterday, because I did not fully understand that provision; but, my dear sir, we can not make a perfect law the first time we try. I think the provision goes too far, but the gentlemen in charge of the bill do not think so. We can try to change that. We should make this law now as perfect as we can, and in the next session of Congress or soon hereafter we can perfect it. I know of no one who will do his part better or more intelligently than my colleague from Tennessee. I am against the impure and dirty thing, whether it is in a State commerce or commerce between the States or wherever it is. If there are State laws to crush the evil in local or State commerce, I want the Federal Government to join hands with the State authorities and to prevent noxious foods and products being transported from one State to another. Do that and you aid the States and help save the people from these evils in a great measure.

Mr. Chairman, I am happy to see the great moral wave that is sweeping all over this country. There is reform going on in everything throughout the United States. In all of the States the people are getting into the saddle, and in another year the man with unclean hands will not be permitted to hold office and the unclean thing will not be permitted, and the guilty ones will be published, whether rich or poor.

Mr. HENRY of Texas. You say you want the Federal Government to join hands with the States and aid the States in enforcing the law?

Mr. GAINES of Tennessee. Exactly.

Mr. HENRY of Texas. There are a number of States that prohibit the sale of intoxicating liquors and the importation of intoxicating liquors—States like Iowa and Kansas.

Mr. GAINES of Tennessee. Yes.

Mr. HENRY of Texas. Now, instead of passing the Hepburn-Dolliver bill, are you not in favor of passing a bill preventing the shipment of intoxicating liquors into those States?

Mr. GAINES of Tennessee. Wherever a State has a prohibition law I think the United States Government should aid the State in enforcing it. This discourages the whisky evil and builds up the State.

Mr. HENRY of Texas. Are you in favor of aiding the States by passing a law that will prevent the shipment of intoxicating liquors into the States?

Mr. GAINES of Tennessee. I want the Federal Government to help the States to do that very thing, and also stop the sending of deleterious products into the States, thus aiding local laws and upbuilding States rights. We are striking now that way at an evil the States can not or have not controlled. Let Congress aid the States to control.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. GAINES of Tennessee. I ask unanimous consent to print in the RECORD two brief newspaper extracts on this subject.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee to extend his remarks in the RECORD?

Mr. PAYNE. The gentleman did not ask to extend his remarks generally, and I do not want him to print in the RECORD any indictments or court records, as he suggested this morning.

Mr. GAINES of Tennessee. I am not talking about that now. These newspaper extracts show that the authorities of the State of Pennsylvania condemned 3,842 pounds of bad beef yesterday and found 104 impure samples of food out of a total of 120 samples.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent to print in the RECORD the newspaper extracts to which he refers. Is there objection?

There was no objection.

The matter referred to is as follows:

ALL BAD BEEF BARRED NOW—3,842 POUNDS CONDEMNED BY HEALTH INSPECTORS LAST WEEK

Director Coplin yesterday completed his report that will be made to the board of health next Tuesday concerning the meat inspection conducted recently by the inspectors of the health department. He said he felt satisfied that none but good meat was coming into the city, because shippers were alarmed at the rigid investigation made by the meat inspectors.

The shippers, according to information received by Director Coplin, are now shunting all cars containing any but the best meat to nearby towns, to prevent any poor meat getting into our market.

The report of the inspection will show that for the week ending on June 16, 3,842 pounds of meat were condemned, and that 800 inspections were made of city slaughterhouses.

There were 60 slaughterhouses condemned as unfit. Of 41 live animals inspected, 12 were killed and the meat condemned.

ARRESTS IN PURE-FOOD WAR—104 OUT OF 120 SAMPLES SHOWED ADULTERATION.

The state dairy and food commission, under the direction of Dr. Benjamin H. Warren, has taken steps to prosecute dealers selling adulterated produce and meats. Two cases for selling adulterated "knackwurst," a kind of sausage, were brought before Magistrate Benton yesterday. They were Leo Zimmerman, of 717 North Second street, and Abraham Cohen, of 212 South street. The former was fined $57.50 and the latter was held in $500 bail for court.

Doctor Warren asserts that the investigations of his department have shown that there is much adulterated food sold, and that action will be taken against several dealers shortly. (Philadelphia Ledger, June 23, 1906.)

Now, if Congress had prevented these bad foods being sent into Pennsylvania, the State of Pennsylvania would not have had this trouble and expense. This bill proposes to do that.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

[p. 9052]

PURE-FOOD BILL

The committee resumed its session.

Mr. BURGESS. Mr. Chairman, it is impossible in five minutes to satisfy anybody on the question of the power of Congress to exclude from the channels of interstate commerce impure food. For myself I have no doubt that the power exists under that clause of the Constitution which gives Congress the power to regulate commerce. I have no doubt of the wisdom of the exercise of that power. I have no doubt that the power to inspect the food is a necessary power in the execution of the power conferred. I voted upon that principle for the meat-inspection law recently in this session of Congress. But, Mr. Chairman, this power has its clear limitations—as definite as the power itself; and I voted against the quarantine bill, because I conceived that section 7 of that law carries the Federal power beyond its just limitations; and I conceive that section 12 of this bill is far more vicious and subject to the contention made then on section 7 of the quarantine law.

Now, gentlemen who have not read this—and doubtless there are many who have not—I invite your attention to section 12, and I invite your attention to the word "but" and the words following, and I invite your attention to the word "except" and the words following as a limitation upon the character of the declaration in the words of the first three lines. After the first three lines declaring that "This act shall not be construed to interfere with commerce wholly internal in any State nor with the exercise of their police powers by the several States," there is a limitation.

But—

Says these other lines—

But foods and drugs fully complying with all the provisions of this act shall not be interfered with by the authorities of the several States

when transported from one State to another so long as they remain in original unbroken packages, except as may be otherwise defined by law or provided by statutes of the United States.

This asserts the direct proposition that if any article begins an interstate journey that such package transported and delivered and its carriage terminated as an interstate-commerce transaction may, because of its form and size and its color or its weight, be still hedged about by the Federal power and the police power of the State absolutely suspended so long as the condition of the package is not changed. I say that is illogical, contrary to every theory of our Government, and ought not to get into this bill; and I am not saying this now as a captious objector to pure-food legislation, because I am in favor of the main provisions of this bill.

More than that, the words beginning with the word "except" assert the power of Congress to legislate in the future over such unbroken packages within a State and destroy and nullify the State's authority in such cases. This is a monstrous doctrine, subversive of all the decisions of the Supreme Court of the United States and destructive of the police powers of the States. I can not support the bill if this language remains in it.

[Here the hammer fell.]

Mr. MANN. Mr. Chairman, I shall be very brief. The gentleman says he opposes this provision for the same reason that he opposed the provisions of section 7 of the quarantine bill, which passed the House by an overwhelming majority of both sides. The same reason for the quarantine bill applies to this provision. As amended by the amendment offered by the gentleman from Iowa, it unquestionably does not affect the whisky trade or the oleomargarine trade between States, and I can see no objection to it, except the old bugbear of States rights, which some of my genial friends from Texas have not received by instruction, but by inheritance.

I ask for a vote.

Mr. WILLIAMS. Mr. Chairman, I hope that the amendment offered by the gentleman from Texas [Mr. BURGESS] will be adopted. There are some of us here who may have old-fashioned ideas, but whether we have or have not, we can and will vote for this bill if this amendment is adopted, and we can not vote for it if it is not adopted.

The gentleman draws an analogy between this provision which we wish to strike out and that in the quarantine bill. There is positively none. The quarantine bill provided that after a train had been inspected and found to be free of disease, and the commodities and passengers upon it had been inspected, that it could be carried on *through* and beyond a State which had State quarantine laws against yellow fever into a State that had none; and this bill provides that this original package may be carried *into* the State and landed there, regardless of the laws of the State, whatever they may be.

Mr. BURGESS. I do not wish the gentleman to misunderstand me. I agree with him that there was room for disagreement among Democrats as to section 7, but there is no room for difference as to this section.

Mr. WILLIAMS. I am answering the argument made by the gentleman from Illinois [Mr. MANN]. The gentleman from Illinois said that the provision in the quarantine bill was the same as this.

Mr. BURGESS. That is not the case.

Mr. WILLIAMS. And he said there was the same reason for it.

Mr. MANN. The gentleman from Illinois stated that the gentleman from Texas [Mr. BURGESS] was opposed to this provision for the same reason that he was opposed to section 7 in the quarantine bill.

Mr. WILLIAMS. Then allow me, who on this floor defended section 7 of the quarantine bill to the best of my poor ability as perfectly constitutional and within the power of the Federal Government, to say that it bore no sort of analogy to this provision, and that whereas that was, in my opinion, constitutional, this is, in my opinion, obnoxious to the charge of violating the spirit if not the letter of the Federal Constitution.

The Federal Government has a right to regulate interstate commerce. It has no right to land anything in a State which is contrary, in the opinion of the State authorities, to the public health, the public morals, or the public policy in that State. The difference between the two is this: The Federal Government has absolute and plenary power in connection with the regulation of interstate commerce up to, but not beyond the point where it strikes the reserved police powers of the States. In the quarantine bill nothing was attempted to be done except to protect a train engaged in interstate commerce transit across a State until it got to a State that had no law against its stopping. This undertakes to protect the article itself in being landed in the State; and I sincerely hope that the amendment offered by the gentleman from Texas [Mr. BURGESS] can prevail, if for no other reason than the old one our ancestors gave when they first passed the law for the toleration of religion, "out of regard for tender consciences." [Applause.]

Mr. BENNET of New York. Mr. Chairman——

The CHAIRMAN. An amendment is not in order at this time. There is an amendment pending.

Mr. CRUMPACKER. I make the point of order that debate on the pending amendment is exhausted.

Mr. MANN. I ask for a vote; but wish to say that if this amendment should be adopted it would prevent, for instance, the city of St. Louis from furnishing southern Illinois——

The CHAIRMAN. Did the Chair understand the gentleman from Indiana to make the point of order?

Mr. CRUMPACKER. I make the point of order that debate on this amendment is exhausted.

The CHAIRMAN. The point of order is sustained. The question is on agreeing to the amendment.

The question being taken, on a division (demanded by Mr. WILLIAMS) there were—ayes 42, noes 90.

Accordingly the amendment was rejected.

Mr. SOUTHARD. I offer the amendment which I send to the Clerk's desk.

The Clerk read as follows:

> Page 22, add a new paragraph, after line 6, as follows:
>
> "*Provided*, that goods sold under an established distinctive or descriptive term shall not be deemed misbranded if label correctly and fully and plainly describes the goods.

[p. 9068]

Mr. SOUTHARD. Now, Mr. Chairman, this is a bill to prevent the manufacture and sale or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medications, and liquors, etc. This bill is not intended to interfere with any legitimate industry, is not intended to prevent or interfere with long-established trade conditions where they do not result in any injury, deception, or fraud on or against the public, and I want to call your attention to one or two paragraphs of this bill.

Section 7 provides that the term "misbranded" used herein shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement regarding the ingredients or substances contained in such article, which statement shall be false and misleading in any particular.

Now, on the next page, beginning at line 13, it says:

> "In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of

another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced."

Now I want to call your attention to the situation where a great wrong may be done if this amendment is not adopted. It is this: There are a large number of articles manufactured and sold under distinctive names and titles where no fraud or injury is occasioned by such manufacture and sale. To give one instance or illustration, here is an article called "cold cream." It has been manufactured for more than twenty years under that name of "cold cream." Everybody knows, every lady in the land who has perhaps used more or less of it knows, that it is not cream, and yet "cold cream" is the distinctive name of this manufactured article, I say everybody knows; almost everybody knows that that is so. Now, gentlemen know that no fraud is possible by the sale of this article under the name. Everybody that uses it knows it, and nobody can use it without knowing it. The trade has been established for twenty years or more, perhaps. This name has become the property of the men who manufacture it. It is as much their property as anything they own. And yet the manufacturer will be refused, he will be denied, hereafter the use of this name as applied to this article, provided this bill is passed in its present shape.

This proposed amendment, which I will read again—

***Provided*, That the goods sold under an established, distinctive term shall not be deemed misbranded if the label correctly, fully, and plainly describes the goods—**

would allow this, article and articles of a similar nature to be sold under their distinctive names.

This bill is for the purpose of preventing fraud and deception in the manufacture and sale of goods so far as we have jurisdiction to do it under the provisions of the Constitution under which we are operating.

With this amendment it will be impossible for any fraud or deception to be practiced, because upon the label it must be shown correctly, fully, and plainly what the goods are. I know the gentleman from Illinois will say that you might sell potted lamb for potted ham. That is probably true, but if anybody undertook to sell potted lamb for potted ham, and the ingredients of this package containing the potted lamb were plainly marked on the package, I venture to say that there would be a very slow sale for potted lamb—such a case may be conceivable, but in practice it would never happen.

Take another illustration. We will say a man has sold for twenty years and has built up a business in "Highland cream," or any other article sold under a distinctive name which might be considered misleading as to the ingredients of which it is composed. Cream may not be the predominant element of its manufacture, and might be considered objectionable under the provisions of this bill. It would be false in that particular, as described in one of these sections, and yet no fraud has been intended, none has been committed, and, under the provisions of this amendment, if adopted, none would be possible.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. MANN. Mr. Chairman, this amendment is in the interest of a particular brand of condensed cream. It was presented to the committee, and it was at one time agreed upon by the committee because at first it looked somewhat harmless.

Mr. SOUTHARD. If the gentleman will allow me, I do not understand him to say that I am presenting this amendment in the interest of any particular firm or person.

Mr. MANN. I did not say the gentleman presented it in the interest of anybody. The amendment is not new; we have been familiar with it for months. It was at one time agreed upon by the committee.

But when we began to see the scope of the amendment, we saw that if that amendment went into the bill you might as well not pass the bill. I give this one illustration which I gave the gentleman but he did not give it correctly. I did not say that potted lamb might be sold for potted ham; but I said that potted lamb was sold for potted chicken, and that by his amendment they could continue to sell potted lamb for potted chicken, putting on one side in large letters "potted chicken" and on the back of the package, in letters so small that you can hardly see them "This article is made out of good quality of lamb."

Mr. SOUTHARD. Will the gentleman yield for a question?

Mr. MANN. Yes.

Mr. SOUTHARD. Does not this amendment provide that the labels shall state correctly, fully, and plainly the contents?

Mr. MANN. Why certainly, it provides that you can say one thing on the package and then turn around and say that that is false. What is the use of telling one thing on the package and saying in another place that it is false? That is what the amendment provides.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Ohio.

The question was taken; and the amendment was rejected.

Mr. WILLIAM W. KITCHEN. Mr. Chairman I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

After the word "receive," in line 3, page 15, insert the words "for commercial purposes."

Mr. WILLIAM W. KITCHIN. Mr. Chairman, if the committee will give me its attention I think I can show that this amendment ought to be adopted. The object of this legislation is to protect the consumers of the country against impure and misbranded foods and drugs as made by manufacturers and as handled by dealers. As this first section is now written in the bill, if a constituent of mine should order a bottle of medicine from another State, or should order a case of canned goods for his own use, and he should receive them in my State, if such medicine or goods are misbranded or impure under this bill, then the consumer who gets them, not for the purpose of trade, not for the purpose of sale, but for his own use, is guilty of a misdemeanor and indictable under this first section. I do not object to punishing the manufacturers of impure and fraudulent goods. I do not object to punishing the dealers who knowingly handle them; but why should you punish a consumer who buys for himself, for his own use, and not for the purposes of trade, such articles from another State?

In this day, when the magazines and newspapers advertise so many foods and drugs, and when the individual consumers buy so many articles of that character from distant cities, why should you make the innocent victims of impositions guilty of misdemeanor? As this section now reads, anyone who "shall receive in any State or Territory, or the District of Columbia, from any other State or Territory," etc., is guilty of a misdemeanor. I propose, after "receive," to put "for commercial purposes."

Mr. MANN. Mr. Chairman, I do not see any objection to the gentleman's amendment.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from North Carolina.

The question was taken; and the amendment was agreed to.

Mr. CRUMPACKER. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read, as follows:

Strike out the words "and for the information of the courts," in line 22, page 22.

Mr. CRUMPACKER. Mr. Chairman, section 9 provides that it shall be the duty of the Secretary of Agriculture to fix standards of food products when advisable for guidance of the officials in charge of the administration of the food laws and for the information of the courts, and to determine the wholesomeness or unwholesomeness of preservatives and other substances which are or may be added to the foods. The objection I have is to the language "and for the information of the courts," which would seem to imply that the standards fixed by the Secretary of Agriculture shall constitute the basis for indictment and criminal prosecution; that they shall be the basis for the penal provisions of the law. I do not believe that any officer of this Government ought to have the power, by rules and regulations, to enact penal and criminal statutes, and that must be the effect of this provision. Why should the section say "and for the information of the courts?" The court is not composed of the judge as an individual. It is an institution composed of the judge and the jury, if it be a jury case, while sitting officially for the discharge of judicial functions, and the only meaning that can be given to this phrase in the section is that it shall be the basis upon which the ques- [p. 9069] tion of crimes under the statute shall be determined.

If an individual is charged with having violated the provisions of the law, the question is not open for him, the question of fact, to be tried by the jury; but if the Secretary of Agriculture has certified that certain things are not up to the standard fixed or certain things are not wholesome, the whole question of fact is foreclosed. It is not open for determination by the court or jury.

Mr. HINSHAW. The gentleman does not believe that the certificate of the Secretary of Agriculture could be introduced in evidence as such and be conclusive as to the crime?

Mr. CRUMPACKER. This section undertakes to make it the basis of the crime. We have many bills pending, and we have passed some, authorizing the heads of Departments to make rules and regulations and imposing penalties, fines, and imprisonment upon any person who violates the rules and regulations. This comes within that same class of legislation. I do not believe under the Federal Constitution that any Department officer has the right to prescribe regulations which shall be the basis of penal prosecutions, but this section undertakes to confer that right. I do not see what other purpose this language could serve in the bill. If it were for the information of the United States attorney, it would be proper, but it is not. It is for the information of the courts. How can the court be informed? It fixes the basis practically for the court to determine whether the man on trial is guilty or innocent, and it violates every proper conception of criminal statutes.

Mr. MANN. Mr. Chairman, I think the gentleman from Indiana misconstrues the intent or meaning of the language. Under the proposition which we present it is desirable to have the same standard, if practicable, used in Maine that is used in California, and the same standard for Louisiana that we have in New York. There is no reason why the standard as far as practicable should not be the same. Now, we provide that the Secretary of Agriculture shall fix standards in accordance with the definitions and provisions of the act; and his act in fixing the standards shall be given for the information of the courts. That does not bind a defendant as to——

Mr. PERKINS rose.

Mr. MANN. If the gentleman will pardon me for a moment. That does not bind a defendant as to whether it is an adulteration or misbranding, but the court has before it, as it ought to have, the national standard, so that the court understands the standard that has been fixed in the opinion of the Secretary of Agriculture, which they are attempting to have enforced throughout the country, but the court is the final arbiter as to whether it is adulterated or misbranded under the act. Now I yield to the gentleman.

Mr. PERKINS. How can the court be informed in any way except by legal evidence. The court has no business to go outside of the evidence presented in the trial to find out what the facts are, and if this certificate is produced why is it not evidence? Why do you not make the opinion of the Secretary of Agriculture evidence for the court to consider?

Mr. MANN. Because it is not necessary to do that. A certified copy of that can be introduced in evidence if this provision is put in the law.

Mr. PERKINS. What is the effect of it?

Mr. MANN. Simply that in the opinion of the Secretary of Agriculture the standard shall be so and so.

Mr. PERKINS. Then the opinion of the Secretary becomes evidence whether or not a man has violated the law?

Mr. MANN. It becomes evidence of the opinion of the Secretary of Agriculture as to the standard of the article, not whether the man has violated the law. This does not give the opinion of the Secretary upon the particular thing at all. This gives information to the court as to the standard. Whether the article complied with the standard or not is a matter for the court to determine, and whether the standard is correct or not is a matter for the court to determine.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken; and the amendment was rejected.

[p. 9070]

The CHAIRMAN. Under the special order of the House the committee will now rise.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CURRIER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill S. 88, and had directed him to report the same back with a substitute and sundry amendments thereto, with the recommendation that the amendments to the substitute be agreed to, that the substitute, as amended be agreed to, and that the bill amended do pass.

Mr. MANN. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. MANN. As I understand the rule which was adopted in reference to this bill, it is not necessary to ask for the previous question in order to shut off further debate. Is that correct?

The SPEAKER. The rule says that a vote shall be immediately taken. The question is on agreeing to the amendments to the substitute. Is a separate vote demanded on any of the amendments? If not, the vote will be taken on the amendments to the substitute in gross.

No separate vote was demanded.

The question was taken on the amendments to the substitute in gross; and they were agreed to.

The SPEAKER. The question is on agreeing to the substitute as amended.

The question was taken; and the substitute as amended was agreed to.

Mr. BURGESS. A parliamentary inquiry, Mr. Speaker. It is in order to move to recommit this bill with instructions?

The SPEAKER. The Chair's recollection is, and his recollection is reenforced, that under the special order a motion to recommit is not in order.

The bill was ordered to a third reading; and it was accordingly read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. HENRY of Texas. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 241, nays 17, answered "present" 9, not voting 112, as follows: [p. 9075]

* * * * *

1.2a (5) (c) June 27: First conference report submitted to Senate, pp. 9379–9381

PURE-FOOD BILL

Mr. HEYBURN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 88) entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment as follows: Strike out all of said amendment and insert in lieu thereof the following:

"That it shall be unlawful for any person to manufacture, sell, or offer for sale within any Territory or the District of Columbia, or deliver for shipment or to cause to be delivered, shipped, or transported from within any State, Territory, or District of Columbia or foreign country any article of food, drugs, medicines, or liquors which is adulterated or misbranded, or which contains any poisonous or deleterious substance within the meaning of this act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

"SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided*, That no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this act.

Sec. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

"Sec. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article, duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

"Sec. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia, shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

"Sec. 6. That the term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for Internal or External Use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated:

"In case of drugs:

"First, If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: *Provided*, That no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

"Second. If its strength or purity fall below the professed standard or quality under which it is sold.

"In the case of confectionery:

"If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

"In the case of food:

[p. 9379]

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Second. If any substance has been substituted wholly or in part for the article.

"Third. If any substance constituent of the article has been wholly or in part abstracted.

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

"Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

"SEC. 98. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"That for the purposes of this act an article shall also be deemed to be misbranded—

"In case of drugs:

"First. If it be an imitation of or offered for sale under the name of another article.

"Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

"In the case of food:

"First. If it be an imitation of or offered for sale under the distinctive name of another article.

"Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucane, chloroform, cannabis indica, choral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

"Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

"Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

"First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

"Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term 'blend' as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

"SEC. 9. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

"SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this act or the laws of that jurisdiction: *Provided, however,* That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

"SEC. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further,* That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against and future importation made by such owner or consignee.

"SEC. 12. That the term 'territory' as used in this act shall include the insular possessions of the United States. The word 'person' as used in this act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within

[p. 9380]

the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

"SEC. 13. That this act shall be in force and effect from and after the first day of January, nineteen hundred and seven."

That the House recede from its amendment to the title and agree to the title as passed in the Senate.

W. B. HEYBURN,
A. C. MCCUMBER,
A. C. LATIMER,
Managers on the part of the Senate.

W. P. HEPBURN,
JAMES R. MANN,
W. H. RYAN,
Managers on the part of the House.

Mr. HEYBURN. I move that the report be printed in the RECORD, printed as a document, and that it be printed as a bill in bill form.

The motion was agreed to.

[p. 9381]

1.2a (5) (d) June 27: First conference report submitted to House, p. 9417

[No Relevant Discussion on Pertinent Section]

1.2a (5) (e) June 28: First conference report withdrawn in Senate p. 9459

[No Relevant Discussion on Pertinent Section]

1.2a (5) (f) June 28, 29: Second conference report submitted and passed Senate, pp. 9472, 9474, 9495–9496

Mr. HEYBURN submitted the following report:

* * * * *

[p. 9472]

Mr. HEYBURN. Mr. President, I would say that the conference report was withdrawn this morning merely for the purpose of transposing and correcting certain language in it that was found to be duplicated in two sections. It is now in correct form. I ask that the Senate agree to the report.

Mr. BAILEY. Mr. President, I did not understand the motion or request of the Senator from Idaho.

Mr. HEYBURN. It was that the Senate agree to the report of the committee of conference.

Mr. BAILEY. And that passes the bill?

Mr. HEYBURN. Yes.

* * * * *

Mr. BAILEY. I will ask the Senator to let the conference report lie over.

Mr. HEYBURN. Let it lie over for the present?

Mr. BAILEY. Yes. I would like to have an opportunity to look at it.

Mr. HEYBURN. Very well. I will call it up later.

[p. 9474]

Mr. HEYBURN. I ask that the conference report on the pure-food bill be laid before the Senate for consideration.

The VICE-PRESIDENT. Is there objection? The Chair hears none, and the Chair lays before the Senate the conference report on the bill (S. 88) for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes. The question is on agreeing to the report.

[p. 9495]

Mr. McCUMBER. Mr. President, the Senate has already passed a pure-food bill. The House then, instead of passing its own bill, which had been introduced in the House, took the Senate bill and amended it. They amended it by striking out all after the enacting clause and inserting in lieu thereof a wholly new bill. It so happened, though, that the provisions of the House bill differed in only a very few respects from the provisions of the Senate bill, and those differences were mainly in separate sections. So when the conference committee met they took the House amendment as the basis, and as any Senator will see, after reading the bill over, the Senate conferees accepted those portions of the House amendment which were substantially the same as the Senate bill, and the House receded from portions in their bill which differed from the Senate bill. So practically we have back before us, although not in the same form, in substance almost wholly the Senate bill as it passed the Senate. At least there is nothing extending the force of the bill. There is nothing making it broader or protruding it over State lines in any manner.

We sought in the Senate bill to keep clearly within the provisions of interstate commerce and to avoid going into the State and coming in conflict with the police power of the State. We have retained every provision practically the same as it was in the bill when it passed the Senate.

Now, what have we eliminated from this bill? Senators will remember that the House measure provided for the fixing of standards, and it called to the assistance of the Secretary of Agriculture certain experts who were to aid him in determining what the standard should be, and also provided that the standards so established by them should be for the guidance of the court. The Senate has always contended that the power to fix standards should not be given to any man, and the House conferees receded from that portion of the House amendment, and it goes out.

The next provision in the House amendment was one which provided for obtaining samples and compelling those who deal in interstate commerce in certain food and drug articles to furnish upon payment the articles which they were selling, for the purpose of having them analyzed. That provision is also stricken out, * * *.

* * * * *

I can assure the Senator from Texas that he will find that the bill is now no broader in reference to the powers granted to deal with food products as it comes from the conference than it was when the Senate passed the bill, and in some respects it is limited to a considerable extent.

[p. 9496]

1.2a (5) (g) June 29: Second conference report submitted and passed House, pp. 9735, 9737–9738, 9740

Mr. MANN. Mr. Speaker, a privileged report. I desire to present a conference report on the bill S. 88—the pure-food bill — and ask unanimous consent that the statement be read in lieu of the report.

The conference report and statement are as follows:

* * * * *

[p. 9735]

Mr. MANN. Mr. Speaker, in presenting the conference report on the pure-food bill I ask the indulgence of the House for a few moments in reference to the bill as agreed upon in conference.

I may say to the House that the bill as reported by the conferees is substantially the bill as passed by the House, with a few exceptions. We struck out in conference the section requiring the Secretary of Agriculture to determine the standards of food. We struck out in conference the section which required a man to sell articles of food which might be used against him in evidence, or made it a misdemeanor if he refused to sell—a provision which, in my judgment and in the judgment of most members of the House and Senate, ought never to have been in any bill, and which was unconstitutional and might have made the whole bill unconstitutional. This provision was in both the Senate and House bills in identically the same language. The conferees thought that so far as the parliamentary situation was concerned they had authority to strike it out, it being part of the House amendment, and that upon its [p. 9737] merits the provision ought to go out; and I think nobody here desires it to remain in.

We struck out the provision which affected the question of States' rights and the control of the Federal Government over original packages, leaving the law as it stands without regard to this bill.

* * * * *

Mr. POLLARD. I believe the gentleman made the statement that the conference struck out the House provision that the Secretary of Agriculture should determine what the standards should be?

Mr. MANN. That section goes out entirely in the conference report.

Mr. POLLARD. Was there any change made in the provision of the House, wherein we provided that a board of five inspectors should be selected to pass upon the wholesomeness or deleteriousness of the foods?

Mr. MANN. That provision was in section 9, directing the Secretary of Agriculture to determine standards, and the entire section goes out.

Mr. POLLARD. If that is the case, who determines whether a preservative that is used is poisonous or deleterious to health?

Mr. MANN. Mr. Speaker, as I stated to the House when the bill was before the House, it is the courts which must determine in the end as to the question of the wholesomeness or the deleteriousness of preservatives or of any article of food. The only object in having that provision in the bill, requiring the Secretary of Agriculture to determine standards, was for the purpose of governing prosecutions and provide uniformity and give to producers in advance of prosecution knowledge of the requirements insisted upon by the officials in charge; but the Senate conferees were unalterably opposed to that provision, and as it was not an essential provision of the law we gave way on that provision in order to save the rest of the bill practically intact as the House had enacted it.

Mr. COOPER of Wisconsin. From such study as I have been able to give the bill it seems to me a good measure; but I should like to put to the gentleman one question in line with the question that was asked by the gentleman from Nebraska [MR. POLLARD], and that is on the matter of the standards. In the report submitted by the Committee on Interstate Commerce on this bill I find this clause on page 4:

> It is, however, essential to the success and operation of any pure-food measure that standards of food products shall be arrived at, for the guidance of the officials charged with the administration of the law and often for the information of the courts.

And a little later it says:

> It is therefore provided in the bill that the secretary of Agriculture—

And so forth. That report states that it is essential for the success and operation of any pure-food law to have standards established by the Secretary. Now, I presume that the conferees have reached a conclusion, in view of some provisions of the bill, that will justify a reversal of that opinion, and I should like to hear from the gentleman from Illinois on that subject.

Mr. MANN. Mr. Speaker, when the report on this bill in the House was written, I did say in the report that it was essential to the success of a pure-food bill. It is essential to the best success of a pure-food bill that the Secretary of Agriculture or some other official shall determine the standards; but the gentleman from Wisconsin certainly has enough understanding of language to know that nothing in the world is *absolutely* "essential" in legislation. We do not have the bill exactly as we wanted it, but, so far as the vital features of the bill are concerned, we have them contained in the bill as it comes back to the House. I may say to the House further that, under the law as it now stands in the agricultural appropriation bill, the Secretary of Agriculture is authorized to fix standards of foods; and while I do not believe that is sufficient legislation, and while for one I never would be willing to consent that the Secretary of Agriculture should have the arbitrary power to determine what is adulterated or misbranded food, I do think that the provision that the House committee brought into the House as section 9, as amended in the House at my suggestion, was, on the whole, the most perfect provision upon the subject of fixing standards which has ever been before the House, and the committee owe quite largely the perfection of that section to the gentleman from Wisconsin [MR. ESCH] and the gentleman from Michigan [MR. TOWNSEND]; and I regret exceedingly that we met a stone wall on that section of the bill in the determined opposition of the Senate conferees. The existing law, however, is entirely sufficient for the operation of the pure-food law.

[p. 9738]

The SPEAKER pro tempore [Mr. WATSON]. The question is on agreeing to the conference report.

The question was taken; and the conference report was agreed to.

On motion of Mr. HEPBURN, a motion to reconsider the last vote was laid on the table. [p. 9740]

1.2b FEDERAL FOOD, DRUG, AND COSMETIC ACT

June 25, 1938, P.L. 75–717, §406, Stat. 1049

TOLERANCES FOR POISONOUS INGREDIENTS IN FOOD AND CERTIFICATION OF COAL-TAR COLORS FOR FOOD

SEC. 406 (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a); but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 402 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(b) The Secretary shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in food and for the certification of batches of such colors, with or without harmless diluents.

1.2b (1) SENATE COMMITTEE ON COMMERCE

S. REP. No. 91, 75th Cong., 1st Sess. (1937)

FOODS, DRUGS, AND COSMETICS

February 15, 1937—Ordered to be printed

Mr. Copeland, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 5]

The Committee on Commerce, to whom was referred the bill (S. 5) to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics, in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes, having considered the same, report thereon with certain amendments, and as so amended, recommend that the bill do pass. The amendments are incorporated in the bill as reported.

This bill has been prepared with three basic principles in mind: First, it must not weaken the existing laws; second, it must strengthen and extend that law's protection of the consumer; and, third, it must impose on honest industrial enterprise no hardship which is unnecessary or unjustified in the public interest.

This bill meets these three principles. It has been prepared after many and extensive conferences with the enforcement agencies of the Government and with representatives of various consumer groups or associations, professional groups, and the industries to be regulated.

Separately called meetings were held with representatives of the food, drug, and cosmetic industries. Letters inviting suggestions were sent to many persons known to be interested in the subject. Several volumes of suggestions have been received from persons in the groups just mentioned. These suggestions have been carefully studied; many of them rejected; some accepted; some accepted in part or in effect. The hearings which have been held by committees of the Senate and House of Representatives on previous bills in former sessions of the Congress have been reviewed and studied to take advantage of the information and discussions contained in them.

[p. 1]

The legislative effort to secure a better law on this subject began in June 1933, with the introduction of S. 1944. Since that time there have been many bills and many revisions of bills. There have been numerous hearings by committees of the Congress. The subject has been debated on the floors of Congress, in the press, throughout the industries, and by the public. This study has gone on over a period of 3½ years. In the preparation of the present bill there has been an earnest, painstaking effort to take advantage of what light has been shed from these various courses.

This bill is presented with the confident assurance that, insofar as it is possible, all the known facts have been utilized, and that the measure is capable of accomplishing the purposes declared for it. And it is a fair bill which will enable honest business to be carried on without interference, except such as is necessary to safeguard the public health.

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The bill has been made shorter and less verbose than previous bills. That has been done without deleting any effective provisions. It has been done by avoiding unnecessary repetitions which existed

[p. 2]

in previous bills, and by consolidating at a single place in a few lines what appeared heretofore at several different places.

[p. 5]

That was also accomplished by eliminating some provisions which, while lending nothing to the strength of the bill, presented the possibility of confusion in enforcement and perhaps raised the issue of its constitutionality. For instance, the requirement that claims for drug products should be supported by medical opinion was deleted. Great difficulty always has been found in defining "medical opinion." In one State, certain practitioners are licensed and their opinions would be considered medical opinion, whereas in another State such practitioners would not be licensed. Furthermore, as shown, in the previous discussions, it would often be impossible to determine what the state of medical opinion is on controversial subjects.

When those considerations were added to the possibility that the guilty might escape through the uncertainties of such a provision, and the strong likelihood that courts would invalidate a statute making medical opinion the criterion of truth and the gage of criminal offense, the provision was deleted. The bill is stronger for the deletion. Medical testimony can and will be adduced in enforcing the law. It will be received as evidence. But, the bill will avoid the danger of making it a legal standard, usually undeterminable, the violation of which incurs criminal penalties.

* * * * * * *

There has been controversy as to whether the Food and Drug Administration or the Federal Trade Commission should enforce the bill's provisions on advertising. On the premise that advertisements of foods, drugs and cosmetics are nothing more than extensions of the labeling, this bill proposes that the control be vested in the Food and Drug Administration which enforces the provisions on adulteration and labeling. But, it does not have the effect of depriving the Federal Trade Commission of its jurisdiction to proceed against false advertising in such form as to make it an unfair method of competition. The bill specifically provides that it shall not be construed as impairing or diminishing the powers of the Federal Trade Commission.

[p. 3]

FOODS

2. Provides for the promulgation of standards of identity and a reasonable standard of quality for food. (A standard of quality is authorized by the present law for canned food only.)

3. Requires the labeling of unstandardized food to disclose the ingredients by name.

4. Prohibits traffic in food which is dangerous to health. (The present law permits regulation of dangerous food only in the event that the poison is added.)

5. Prohibits addition of poison. If it cannot be avoided in pro-

duction or manufacture, when it reaches the consumer the product must be safe for human use.

6. Eliminates the "distinctive name" proviso of the existing law under which the sale of products, the labels of which are misleading, are now permitted sale.

7. Requires fully informative labeling of infant and invalid food.

8. Requires label declaration of artificial colors and artificial flavors in food.

9. Forbids traffic in confectionery containing metallic trinkets and other inedible substances which have been found to be a menace to the welfare of children.

10. Authorizes emergency license control of food that might be dangerous by reason of contamination with micro-organisms. Such licensing is limited to operations in which the public health cannot be protected otherwise.

[p. 5]

GENERAL

20. Prohibits the use of poisonous containers for food, drugs, and cosmetics.

21. Requires that food, drugs, and cosmetics be prepared and handled under conditions of reasonable cleanliness.

22. Forbids the use of uncertified and impure coal-tar in food, drugs, and cosmetics.

23. Prohibits slack-filling and the use of deceptive containers for food and drugs.

24. Provides for factory inspection and the procurement of records needed to prove Federal jurisdiction.

25. Provides increased penalties for violations.

26. Authorizes the Federal courts to enjoin violations.

[p. 6]

1.2b (2) SENATE COMMITTEE ON COMMERCE

S. REP. No. 152, 75th Cong., 1st Sess. (1937)

FOODS, DRUGS, AND COSMETICS

MARCH 8, 1937.—Ordered to be printed

Mr. COPELAND, from the Committee on Commerce, submitted, in lieu of Senate Report No. 91, the following

AMENDED REPORT

[To accompany S. 5]

The Committee on Commerce, to whom was referred the bill (S. 5) to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics, in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes, and which was heretofore reported with certain amendments, submit herewith an amended report and recommend that the bill, as amended, do pass. The amendments are incorporated in the bill as reported.

This bill has been prepared with three basic principles in mind: First, it must not weaken the existing laws; second, it must strengthen and extend that law's protection of the consumer; and, third, it must impose on honest industrial enterprise no hardship which is unnecessary or unjustified in the public interest.

[p. 1]

FOODS

2. Provides for the promulgation of standards of identity and a reasonable standard of quality for food. (A standard of quality is authorized by the present law for canned food only.) In providing a standard of identity for citrus fruit, it is intended that such will be a standard of maturity only.

3. Requires the labeling of unstandardized food to disclose the ingredients by name.

4. Prohibits traffic in food which is dangerous to health. (The present law permits regulation of dangerous food only in the event that the poison is added.)

5. Prohibits addition of poison. If it cannot be avoided in production or manufacture, when it reaches the consumer the product must be safe for human use.

6. Eliminates the "distinctive name" proviso of the existing law under which the sale of products, the labels of which are misleading, are now permitted sale.

7. Requires fully informative labeling of infant and invalid food.

8. Requires label declaration of artificial colors and artificial flavors in food.

9. Forbids traffic in confectionery containing metallic trinkets and other incredible substances which have been found to be a menace to the welfare of children.

10. Authorizes emergency license control of food that might be dangerous by reason of contamination with micro-organisms. Such licensing is limited to operations in which the public health cannot be protected otherwise.

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1.2b (3) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H.R. REP. No. 2139, 75th Cong., 3rd Sess. (1938)

FOOD, DRUG, AND COSMETIC ACT

APRIL 14, 1938.—**Committed to the Committee of the Whole House on the state of the Union and ordered to be printed**

Mr. LEA, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 5]

The Committee on Interstate and Foreign Commerce, to whom was referred the act (S. 5) to prevent the adulteration, misbranding, and false advertising of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes, report favorably theron with an amendment and recommend that the act do pass.

The committee amendment strikes out all of the Senate bill and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The act herewith reported is the culmination of more than 5 years of study by your committee.

GENERAL PURPOSES

This act seeks to set up effective provisions against abuses of consumer welfare growing out of inadequacies in the Food and Drugs Act of June 30, 1906, as amended (U. S. C., title 21, secs. 1-15). That act is popularly known as the Wiley pure-food law, because that great pioneer in pure food and drug legislation, Dr. Harvey W. Wiley, led the fight for its enactment.

While the old law has been of incalculable benefit to American consumers, it contains serious loopholes and is not sufficiently broad in its scope to meet the requirements of consumer protection under modern conditions.

[p. 1]

IMPROVEMENTS OVER EXISTING LAW

The measure contains substantially all the features of the old law that have proved valuable in promoting honesty and fair dealing. But it amplifies and strengthens the provisions designed to safeguard the public health and prevent deception, and it extends the scope of the law to include cosmetics, therapeutic devices, and certain drugs that now escape regulation.

The principal respects in which the measure differs from the present law are:

* * * * * * *

Foods that are dangerous because of naturally contained poisons rather than added poisons are brought under regulation. The addition of poison to foods is prohibited except where such addition is necessary or cannot be avoided; and in such cases tolerances are provided limiting the amount of added poison to the extent necessary to safeguard the public health.

Where the other provisions of the measure are not effective to control danger to health arising from bacterial contamination of food, temporary license restrictions can be imposed until the difficulty is corrected.

Definitions and standards of identity are provided under which the integrity of food products can be effectively maintained.

[p. 2]

Section 305 provides that the accused be given a hearing before a criminal proceeding is instituted. This merely requires continuation of a practice that has been followed in the enforcement of the present law. The language has been changed from that of the Senate provision (sec. 7) to make it clear that the kind of hearing contemplated is an informal one, and is not to be formal preliminary trial of the case before the Secretary. The Senate provision directing the Secretary to certify the facts to the United States Attorney and prescribing that the report should be accompanied by authenticated findings of appropriate officers has been delected as unnecessary.

Section 306 authorizes the settlement of minor violations by suitable written notice or warning where the public interest will be adequately served by such settlement. Its tendency is to avoid encumbering court dockets with trivial or unnecessary litigation. This specific statement will give definite legislative sanction to the procedure.

[p. 3]

Section 406, in subsection (a), provides for a fairer and more effective control of the addition of poisons to food than does the present law. This subsection first prohibits the unnecessary addition of poisons. Where such additions are necessary, the establishment of tolerances is authorized, based upon the practical necessities for the use of poisonous substances. It is well recognized that an adequate fruit and vegetable supply could not be brought to maturity without the use of toxic insecticides and fungicides. But the situation is made extremely complex by the number of poisonous substances used for different crops in different localities, and by contaminations which unavoidably occur in many manufacturing processes. The purpose of the subsection is to insure that the total amount of poisons the consumer receives will not be sufficient to jeopardize health. The needs of each branch of the food-producing industry can be met and the public health can be adequately protected.

Subsection (b) of this section specifically authorizes the listing of harmless coal-tar colors for use in food and the certification of batches of the listed colors which are found to be sufficiently free from impurities to be safe. This continues in effect a system of certification which has been followed almost from the beginning of the enforcement of the old food and drugs law in order to make available to the food-manufacturing industries adequate supplies of colors of established safety and purity.

[p. 6]

PROCEDURE GOVERNING FORMULATION AND JUDICIAL REVIEW OF REGULATIONS

Section 701 (e), (f), and (g) of the committee amendment set forth the procedure governing the formulation and judicial review of certain regulations to be issued by the Secretary. These regulations include those with respect to the following matters: Establishing definitions and standards of identity, standards of quality, and standards of fill of container for foods (sec. 401); information on label concerning vitamin, mineral, and dietary properties of foods (sec. 403 (j)); limitations on quantity of added poisonous or deleterious substances whose presence cannot be avoided by good manufacturing practice (sec. 406 (a)); issuance of temporary permits governing manufacturing, processing, or packing so as to prevent contamination with micro-organisms (sec. 404 (a)); prescribing appropriate tests on methods of assay to determine

[p. 9]

strength, quality, or purity of drugs (sec. 501 (b)); designation of drugs as habit-forming (sec. 502 (d)); directions on label as to use of drugs (sec. 502 (f)); statements on label as to precautions necessary by reason of liability of drug to deterioration (sec. 502 (h)); and listing of harmless coal-tar colors and certification of batches thereof for foods, drugs, or cosmetics (secs. 406 (b), 504, and 604).

Such regulations are not merely interpretive. They have the force and effect of law and must be observed. Their violation may result in the imposition of criminal penalties, or in the confiscation of the goods involved if shipped in interstate commerce, or in their exclusion from the country if imported.

Hearings.—A proposal to issue, amend, or repeal any such regulation is to be made by the Secretary of Agriculture on his own initiative, or by the interested industry or a substantial portion thereof, and the Secretary is required to set the proposal for hearing. The proposal is to be set forth in general terms so that the Secretary will be free to frame the precise language of the regulation or amendment or repeal in the light of the evidence developed at the hearing.

As a result of the hearing on the proposal the Secretary may determine to issue, amend, or repeal the regulation, or not to do so. In either case, however, he is required to issue and make public an order specifying the action taken. This will prevent the pocketing of proposals to issue, amend, or repeal a particular regulation and eliminate application of the "negative order" doctrine which denies court relief where the executive officer merely fails to take any affirmative action.

If as a result of the hearing on any proposal the Secretary determines to issue, amend, or repeal the regulation, the action taken may be based only on substantial evidence of record at the hearing. Similarly, the action of the Secretary in failing to carry into effect any proposal for issuance, amendment, or repeal of a regulation set for hearing must rest on a like basis. In either instance detailed findings of the facts on which the action of the Secretary is based are required to be made public as a part of his order. It follows that if the order of the Secretary is to be valid, the Government must have placed in the record at the hearing its evidence in support of the action taken and thereby afford opportunity for persons affected to controvert viva voce the Government's evidence. While common law or jury trial rules of evidence need not be enforced at such a hearing, nevertheless it is essential to such a hearing that all the evidence on which the administrative officer acts be disclosed at the hearing and that the right to controvert viva voce be accorded. Cf. *Ohio Bell Tel. Co.* v. *Public Utilities Comm. of Ohio* (1937) 301 U. S. (preliminary print) 292.

The order of the Secretary is to take effect not earlier than 90 days after it is issued and made public, except that if the Secretary finds that emergency conditions so require, and specifies in the order his findings as to such conditions, then the order may take effect at an earlier date.

Judicial review.—Judicial review of the order of the Secretary with respect to any proposal for the issuance, amendment, or repeal of a regulation may be had in a district court of the United States.

Such review may be had on the initiative of any individual or business organization by instituting the special review proceedings [p. 10] provided in the committee amendment within 90 days after issuance of the Secretary's order. The complainant can institute the proceedings only in a case of actual controversy as to the validity of the order, thereby meeting the constitutional requirement for vesting in the Federal courts jurisdiction only of "cases" or "controversies."

Such review proceeding is to be instituted by filing a complaint in the district court for the district where the complainant resides or has his principal place of business. The new Rules of Civil Procedure for the District Courts of the United States which will take effect following the present session of Congress, will govern the form of complaint, service of summons, and the like. There is one exception. Personal service on the Secretary may be had anywhere in the United States even though he is without the territorial limits of the State in which the court is held.

In such special review proceeding the court will have jurisdiction to enjoin the Secretary from enforcing the order if it is invalid and may also compel him to issue an order providing for such regulation, amendment, or repeal as will be in accordance with law if justice requires that such affirmative action be taken.

Further opportunity for review of a regulation placed in effect by the Secretary will occur in criminal, injunction, libel for condemnation, exclusion of imports, or other proceedings instituted by the Government under the bill, in which the defendant is charged with violating the regulation (see secs. 302, 303, 304, and 801). If, through prior review proceedings, there has been a final determination of the validity of the regulation or order in question by the Supreme Court of the United States, or the circuit court of appeals for the particular circuit, then the question of validity would likely have become stare decisis. If, however, this is not the case, the validity of the regulation or order could be inquired into and determined in such criminal, injunction, libel for condemnation, exclusion of imports, or other proceeding.

There is also saved as a method to review a regulation placed in effect by the Secretary whatever rights exist to initiate a historical proceeding in equity to enjoin the enforcement of the regulation, and whatver rights exist to initiate a declaratory judgment proceeding.

The special type of review above outlined, where the proceedings are instituted by the individual or business organization affected, will permit an early determination of the validity of the Secretary's action with respect to any proposal for a regulation, amendment, or repeal, and make for prompt certainty as to legal rights.

In each of the types of review proceeding above outlined the transcript of the record and proceedings before the Secretary on the proposal resulting in the order, may become a part of the evidence in the court. In the special review proceedings the Secretary is required to certify and file the transcript in the court. In the other cases, a certified copy of the transcript is required to be furnished by the Secretary and is admissible in court. The special review provisions also specifically provide that the court is to permit the private individual or concern to supplement the evidence in such transcript by adducing additional evidence (which the Secretary may rebut) bearing on the validity of the order, but only on a showing that such additional evidence is material and that [p. 11] there were reasonable grounds for failure to adduce it before the Secretary. While this right to adduce additional evidence inheres in the criminal and libel proceedings originating in court, specific provision is made for it in the committee amendment in connection with the special review proceedings. The additional evidence could be taken before the court or a master, or, in the case of the special review proceeding, the court may remand the case to the Secretary for the taking of such evidence or its technical character, or in order to permit the Secretary to amend his order in the light of such additional evidence, or for any other reason.

The committee amendment is silent as to any limitations on the court in holding invalid the order of the Secretary. The court is thus left free to exercise its right of review to the full extent that it may constitutionally do so. A regulation would, of course, be invalid if the Secretary failed to observe the procedural requirements as to hearing, notice, and the like, or if the order, as specifically required by the committee amendment, was not based on substantial evidence of record at his hearing, or went beyond or was contrary to the Secretary's own finding, or to constitutional or jurisdictional limitations. Furthermore, the order would be invalid if for any other reason it was not in accordance with law. The court can take into consideration the additional evidence, if any, adduced before it, and to the extent that it may constitutionally do so, weigh the combined evidence, and hold the order invalid if in the light of such evidence it appears that the findings on which the Secretary based the order are not true in fact or that the order is unreasonable, arbitrary, or capricious.

[p. 12]

FOOD, DRUG, AND COSMETIC ACT

APRIL 21, 1938.—Ordered to be printed

Mr. CHAPMAN, from the Committee on Interstate and Foreign Commerce, submitted the following

MINORITY VIEWS

[To accompany S. 5]

The undersigned, members of the Committee on Interstate and Foreign Commerce, submit the following minority views with respect to one of the most important features of the bill, namely, provisions for court review of regulations of section 701 (f).

It is our view that the bill, if enacted with this review provision, will not afford any substantial improvement in consumer protection over the terms of the present law. In fact, in some respects it represents an impairment of the consumer-protective features of the present law.

Section 701 (f) sets up a method of court review of regulations that is wholly unprecedented. It is specifically provided that this method of review is in addition to, and not in substitution for, other methods of review provided by law, such as equity proceedings and proceedings under the Declaratory Judgment Act.

Regulations subject to this new form of review relate to the identity and quality of food; to requirements for informative labeling of special dietary food, such as that used by infants and invalids; to food contaminated with disease organisms where distribution might result in serious epidemics; to the addition of poisons to food; to the certification of coal-tar colors for use in foods, drugs, and cosmetics; to establishing adequate laboratory tests for important official drugs; to the listing of narcotic and habit-forming drugs; to label warnings against probable misuse of dangerously potent drugs; and to label directions for the preservation of potent drugs liable to deterioration.

These provisions constitute the very heart of any worthy food and drug legislation. If the public health and welfare are to be adequately safeguarded, regulations putting these provisions into effect should be promptly and effectively enforceable and certainly should be subject to no greater restrictions and delays in review by the courts to determine their validity than regulations authorized [p. 1] by other Federal laws which deal with economic questions rather than the vital questions of public health concerned in this legislation.

Section 701 (f) permits any person who will be adversely affected by one of the regulations listed above to file, any time within 90 days after the regulation has issued, a complaint in the district court for the district where such person resides or has his principal place of business to enjoin the Secretary of Agriculture from enforcing the regulation. For example, if a regulation is issued requiring label warnings against probable and dangerous misuse of a certain class of patent medicine, then each manufacturer of that class of medicines and each dealer who profits by the sale of the medicines may file a complaint in his local district court to enjoin the enforcement of the regulation. If a single district judge could be found who would issue an injunction against such enforcement, the regulation could not be enforced at any place in the United States, even though every other district judge in the country had refused to issue an injunction. The provision would therefore clothe each and every district judge with authority to block the enforcement of a regulation throughout the United States. This is an extraordinary extension of jurisdiction and an extraordinary grant of power never heretofore seriously advanced in the entire history of the country. As suggested in the letter of the Secretary of Agriculture, a copy of which is hereto attached, if there is to be an exploration into new forms of court review of administrative regulations specifically authorized by congressional enactment, it is our conviction that such experimentation should be made in fields other than those of vitally important health laws. [p. 2]

If this bill is enacted into law with section 701 (f), the court-review section, in it, as reported by a majority of the committee, what started out as an effort on the part of the advocates of a more adequate food and drug law to enlarge the scope of the existing law, to fill in the loopholes in it, and to put more teeth into it, will end with having accomplished the directly opposite result and years of earnest effort will have gone for worse than naught.

VIRGIL CHAPMAN,
JERRY J. O'CONNELL,
CARL E. MAPES,
CHAS. A. WOLVERTON,
JAMES WOLFENDEN,
PEHR G. HOLMES,
[p. 5]

1.2b (4) COMMITTEE OF CONFERENCE

H.R. REP. No. 2716, 75th Cong., 3rd Sess. (1938)

FOOD, DRUG, AND COSMETIC ACT

JUNE 11, 1938.—Ordered to be printed

Mr. LEA, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S.5]

The committe of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 5) to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

CHAPTER I—SHORT TITLE

SECTION *1. This Act may be cited as the Federal, Food, Drug, and Cosmetic Act.*

* * * * * * *

[p. 1]

TOLERANCES FOR POISONOUS INGREDIENTS IN FOOD AND CERTIFICATION OF COAL-TAR COLORS FOR FOOD

SEC. *406 (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a); but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 402 (a). While such a regulation is in effect limiting the quantity of any such* *substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 402 (a). In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.*

(b) The Secretary shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in food and for the certification of batches of such colors, with or without harmless diluents. [p. 10]

CHAPTER VII—GENERAL ADMINISTRATIVE PROVISIONS

REGULATIONS AND HEARINGS

SEC. *701. (a) The authority to promulgate regulations for the efficient enforcement of this Act, except as otherwise provided in this section, is hereby vested in the Secretary.*

(b) The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe regulations for the efficient enforcement of the provisions of section 801, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Agriculture shall determine.

(c) Hearings authorized or required by this Act shall be conducted by the Secretary or such officer or employee as he may designate for the purpose.

(d) The definitions and standards of identity promulgated in accordance with the provisions of this Act shall be effective for the purposes of the enforcement of this Act, nothwithstanding such [p. 16] *definitions and standards as may be contained in other laws of the United States and regulations promulgated thereunder.*

(e) The Secretary, on his own initiative or upon an application of any interested industry or substantial portion thereof stating reasonable grounds therefor, shall hold a public hearing upon a proposal to issue, amend, or repeal any regulation contemplated by any of the following sections of this Act: 401, 403, (j), 404 (a), 406 (a) and (b), 501 (b), 502 (d), 502 (h), 504, and 604. The Secretary shall give appropriate notice of the hearing, and the notice shall set forth the proposal in general terms and specify the time and place for a public hearing to be held thereon not less than thirty days after the date of the notice, except that the public hearing on

regulations under section 404 (a) may be held within a reasonable time, to be fixed by the Secretary, after notice thereof. At the hearing any interested person may be heard in person or by his representative. As soon as practicable after completion of the hearing, the Secretary shall by order make public his action in issuing, amending, or repealing the regulation or determining not to take such action. The Secretary shall base his order only on substantial evidence of record at the hearing and shall set forth as part of the order detailed findings of fact on which the order is based. No such order shall take effect prior to the ninetieth day after it is issued, except that if the Secretary finds that emergency conditions exist necessitating an earlier effective date, then the Secretary shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Secretary shall specify therein to meet the emergency.

(f) (1) In a case of actual controversy as to the validity of any order under subsection (e), any person who will be adversely affected by such order if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the Circuit Court of Appeals of the United States for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. The summons and petition may be served at any place in the United States. The Secretary, promptly upon service of the summons and petition, shall certify and file in the court the transcript of the proceedings and the record on which the Secretary based his order.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence is rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) The court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall

by its judgment order the Secretary to take action, with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. [p. 17]

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

(5) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(g) A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, libel for condemnation, exclusion of imports, or other proceeding arising under or in respect to this Act, irrespective of whether proceedings with respect to the order have previously been instituted or become final under subsection (f). [p. 18]

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title and agree to the same.

CLARENCE F. LEA,
VIRGIL CHAPMAN,
WILLIAM P. COLE, Jr.,
SAMUEL B. PETTENGILL,
HERRON PEARON,
CARL E. MAPES,
B. CARROLL REECE,
CHARLES A. HALLECK,
Managers on the part of the House.

ROYAL S. COPELAND,
JOSIAH W. BAILEY,
BENNETT CHAMP CLARK,
ERNEST W. GIBSON,
A. H. VANDENBERG,
CHAS. L. MCNARY,
HATTIE W. CARAWAY,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 5) to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The bill as agreed to in conference is substantially the same as the amendment of the House to the Senate bill. The important changes from the House amendment are as follows:

Injunctions to restrain violations.—The bill as agreed to in conference permits injunctions to restrain violation of the act in the following respects in which the House amendment did not provide for injunctions:

(1) Manufacture within any Territory (including the District of Columbia) of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) Tampering with the labeling of, or doing any other act with respect to, a food, drug, device, or cosmetic, if such act is done while the article is held for sale after shipment in interstate commerce and results in such article being misbranded.

(3) Using, on the labeling of a drug or in advertising a drug, a representation that an application with respect to such drug is effective under the "new drug" section, or that such drug complies with the provisions of such section.

Permission for multiple libels.—Under the House amendment multiple libels in cases of misbranding are permitted when the Secretary has probable cause to believe that the misbranded article is dangerous to health or that the labeling of the misbranded article is, in a material respect, false or fraudulent. Under the conference agreement such libels are permitted when the Secretary from facts found, without hearing, by him or any officer or employee of the Department of Agriculture, has probable cause to believe that the misbranded article is dangerous to health or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer.

Change of venue when only one libel permitted.—Under the House amendment where the number of libels for misbranding is limited to one proceeding, such proceeding shall on application of the claimant seasonably made be removed for trail to a district in a State contiguous to the State of the claimant's principal place of business; such district to be stipulated between the parties, or, if they cannot agree, to be designated by the court to which the application is made. Under the conference agreement the change of [p. 22] venue is to any district agreed provide the consumer with adequate information as to its identity within the meaning of certain provisions of the Federal Alcohol Administration Act. This provision is omitted by the conference agreement.

Variations in strength, quality, and purity of official drugs.—The House amendment defined drugs recognized in official compendia as adulterated if they differ in strength, quality, or purity from the official standard, but permitted difference in strength on condition that the difference from the standard be plainly stated on the label. The conference agreement permits, on the same condition, differences also in quality and purity.

Identity of drugs.—Under the House amendment a drug or device which does not purport to be and is not represented as a drug recognized in an official compendium is considered adulterated if its identity differs from that which it purports or is represented to possess. This provision is omitted under the conference agreement as surplusage since in the case of these drugs and devices, as well as in the case of drugs recognized in an official compendium, if the identity differs from that which it purports or is represented to possess, they would either be considered to be adulterated under section 501 (d) or misbranded under section 502, or both.

Drugs or devices dangerous to health when used in accordance with the label.—The conference agreement transfers from the adulteration section to the misbranding section the provision of the House amendment relating to drugs and devices which are dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling.

Label disclosure of ingredients of drugs.—The House amendment and the bill as agreed to in conference requires the label of all drugs, except those recognized in official compendia, which are made with two or more active ingredients, to bear the names of each active ingredient, unless exempted by regulations on the ground that compliance is impracticable. The conference agreement omits a provision of the House amendment which exempted all drugs from this requirement, except with respect to alcohol, if their composition had been disclosed to the Secretary, but adds a provision, not found in the House amendment, also requiring label disclosure of the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic digitalis, digitalis glucosides, mercury, cuabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances.

Warnings against misuse of drugs and devices.—Under the House amendment a drug or device is considered misbranded unless its labeling bears such warnings against use in pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as the Secretary finds necessary for the protection of users and by regulations prescribes. Under the conference agreement a drug or device is considered misbranded unless its labeling bears such adequate warnings in the cases specified in the House amendment as are necessary for the protection of users.

Packing of drugs.—Under the House amendment an article purporting to be a drug the name of which is recognized in an

[p. 24]

official compendium is deemed misbranded if not packaged and labeled as prescribed in the compendium. The conference agreement permits the method of packing to be modified with the consent of the Secretary.

Judicial review of regulations.—Judicial review of the Secretary's order putting into effect a regulation under section 701 (e) under the conference agreement is had in the circuit court of appeals of the circuit of the residence or principal place of business of the person aggrieved. Under the House amendment review is in the United States district court.

The conference agreement gives the court jurisdiction to affirm or set aside the order, in whole or in part, and the order may be set aside temporarily or permanently. The conference agreement also gives the court the express power to require the Secretary to take action in accordance with law when there is error in an order of the Secretary which refuses to issue, amend, or repeal a regulation of the Secretary. The findings of the Secretary, as to facts, if supported by substantial evidence, are conclusive on the court.

The type of judicial review provided in the agreement is as broad as the Constitution permits in the case of review by a constitutional court. It is to be noted that the function of the Secretary in making regulations and orders to carry them out is legislative in character. The bill as agreed to in conference retains the provisions of the House bill in section 701 (e) which lays down the rules under which the regulations may be formulated and issued. Notice, hearing, and findings are required, and the Secretary must base an order only on substantial evidence of record. Judicial review of the Secretary's action to determine if there has been compliance with such requirements, whether or not there was substantial evidence to support the finding, and, of course, upon constitutional questions, may be had.

Under the conference agreement additional evidence is to be taken before the Secretary. The provision in the House amendment for an alternative of taking such evidence before the court or a master is omitted.

Express provision is made under the conference agreement, for review by the Supreme Court of the United States upon certiorari or certified questions.

The provision of the House amendment under which the remedies provided for are in addition to, and not in substitution for, other legal remedies, is retained.

CLARENCE F. LEA,
VIRGIL CHAPMAN,
WILLIAM P. COLE, Jr.,
SAMUEL B. PETTENGILL,
HERRON PEARSON,
CARL E. MAPES,
CHARLES A. HALLECK,
B. CARROLL REECE,
Managers on the part of the House.

[p. 25]

1.2b (5) CONGRESSIONAL RECORD

1.2b (5) (a) VOL. 81 (1937), March 8, 9: Debated, amended and passed Senate, pp. 1962, 2010, 2013–2014, 2016, 2018–2019

Mr. COPELAND.

* * * * *

We come then to the matter of food. The new bill provides for the promulgation of standards of identity and a reasonable standard of quality for food. Under the present law, the McNary-Mapes Act—the only far-reaching and useful enactment on this subject which has done much to promote the welfare of the human family—the standard of quality is authorized for canned food only. The pending bill proposes that there shall be a standard of identity for all foods and a standard of quality.

[p. 1962]

The next amendment was, under the subhead "Tolerances for poisonous ingredients in food and certification of coal-tar colors for food", in section 15, paragraph (a), page 26, line 14, after the word "Any", to strike out "contaminating" and the comma and insert "contaminating"; in line 22, after the word "health", to insert "and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of section 11 (a)"; and in line 25, after the word "the", to strike out "quality" and insert "quantity", so as to make the paragraph read:

> SEC. 15. (a) Any contaminating poisonous, or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of section 11 (a); but when such substance is so required or cannot be so avoided, the Secretary is authorized to promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of section 11 (a). In determining the quantity of such added substance to protect the public health, and after the effective date of such regulations, and during such temporary period, no person shall introduce into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor or packer, unless such manufacturer, processor, or packer holds a permit issued by the Secretary as provided by such regulations.

The amendment was agreed to.

[p. 2010]

Mr. MOORE. Mr. President, I offer an amendment in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. It is proposed to strike out all after the enacting clause and to insert in lieu thereof the following:

* * * * *

[p. 2013]

> "* * * Provided, however, That all food standards adopted by the Secretary of Agriculture for the purposes of this act shall be solely of identity and minimum quality and shall be based solely upon ascertainable scientific facts, which standards shall not be enforced by the Secretary until 1 year after promulgation, which shall be not less than 3 months after public hearings have been held * * * at which all citizens having knowledge of such food products shall have a right to be heard."

* * * * *

Mr. MOORE. Mr. President, I hesitate to lengthen unduly the debate upon the bill, but it is a measure of such vital importance and means so much to every citizen in this Nation that it seems to me we can afford to give it the most careful consideration.

[p. 2014]

Mr. COPELAND. Mr. President, I am so devoted to my friend the Senator from New Jersey, and have been for many years, that I wish I might say without reservation that what he wants I want. If he really and truly wants what he has proposed, however, I must say that I do not want it.

In order that the record may be clear, so that those who take pains to read the RECORD may have knowledge of the subject, I think there should be included here as much of a rebuttal as can be made of the points made by the able Senator in presenting his substitute.

His amendment, in the nature of a substitute, omits all reference to cosmetics and devices. It does not cover advertising. It leaves in it the evil of the "distinctive names" which are given products; it permits the commercial trade to establish standards which must be enforced by the Department, and is otherwise evil.

[p. 2016]

Mr. President, I wish the RECORD to show that the amendment or substitute submitted by the Senator from New Jersey has been properly and fully considered by the committee and by the Senate. I also wish to have the RECORD show, in order that those who read it may know, that if the amendment proposed were adopted it would omit the following important provisions:

* * * * *

Second. Prohibition of addition of

poisons to food, except where such addition is required or cannot be avoided in production; authorization to limit to point of safety added poisons that are required or cannot be avoided.

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Mr. MOORE. Mr. President, I merely wish to say that I appreciate all the Senator from New York has said. I shall not detain the Senate any longer, except to say that I am thoroughly convinced of the accuracy of my statements and reiterate them.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute offered by the Senator from New Jersey [Mr. MOORE].

Mr. MOORE. I call for the yeas and nays.

The yeas and nays were not ordered.

The amendment, in the nature of a substitute, was rejected.

[p. 2018]

Mr. MOORE. Mr. President, I move to recommit the bill to the committee for further consideration, in order to give the objectors to whom I have referred a chance to be heard.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Jersey.

The motion was rejected.

The PRESIDING OFFICER. Is there any further amendment to be offered? If not, the Secretary, without objection, will be authorized to make the necessary clerical changes in the sections and subdivisions.

The question now is on the engrossment and third reading of the bill.

The bill (S. 5) was ordered to be engrossed for a third reading, read the third time, and passed.

[p. 2019]

1.2b (5) (b) VOL. 83 (1938), May 31: Made Special Order and debated, pp. 7771–7778, 7780–7781

THE FOOD AND DRUG BILL

Mr. O'CONNOR of New York. Mr. Speaker, I call up House Resolution 512.

The Clerk read the resolution, as follows:

House Resolution 512

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 5, "An act to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes," and all points of order against said act are hereby waived. That after general debate, which shall be confined to the act and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the act shall be read for amendment under the 5-minute rule. It shall be in order to consider without the intervention of any point of order the substitute amendment recommended by the Committee on Interstate and Foreign Commerce, and such substitute for the purpose of amendment shall be considered under the 5-minute rule as an original act. At the conclusion of such consideration the Committee shall rise and report the act to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the act and the amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. O'CONNOR of New York. Mr. Speaker, I yield 30 minutes to the gentleman from Michigan [MR MAPES].

Mr. Speaker, this is a rule for the consideration of the Food and Drugs Act, a matter which has been before us for many years. It is an open rule permitting amendments, and I reserve the balance of my time.

[p. 7771]

Mr. MAPES. Mr. Speaker, I yield myself 20 minutes. I am opposed to the committee substitute as reported and am opposed to the rule. Unless the bill is materially modified I shall vote against it. The particular provision in the bill to which I am opposed is the so-called court-review section, paragraph (f) of section 701. That does not mean that I am opposed to any court review. Not at all. Everyone concedes the right of an aggrieved person to a court review, or his day in court, but not such a court review as the one provided for in the committee substitute. I particularly emphasize that fact. A discussion of the merits of the legislation will more properly come up under the general debate on the bill, but in this debate on the rule I want to call the attention of the House to some of the opposition to the legislation as reported by the committee.

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Mr. ROBERTSON. Mr. Speaker, will the gentleman yield?

Mr. MAPES. Yes.

Mr. ROBERTSON. Will my colleague advise the House whether or not he supported, when the bill came over from the Senate, the court-review section that the Senate had written into this bill, or did he oppose any provision for a court review?

Mr. MAPES. I do not remember that that was a controversial issue until this came up. If the gentleman from Virginia has any information about that, I would be pleased to have him disclose it. Personally, I do not recall that the question came up in any controversial way.

Mr. ROBERTSON. The best lawyers the International Apple Association and the other producers of fruits and vegetables can get render it as their deliberate opinion that it is highly essential for the protection of those who must use spray in the production of fruit and vegetables to have the privilege of going into court to test the reasonableness of the departmental regulations.

I understand that my colleague admits that they should have the right to go into court to test the question of reasonableness. Let us take the case of a Pacific Coast producer in the State of Washington. His apples have been taken up under a regulation that permits and allows tolerance, say, of 0.01, unsupported by any medical testimony, any scientific fact or data to establish the fact that to exceed such a tolerance would be injurious to human health. My friend tells the House, as I understand, that that apple producer shall not have the right to test that regulation in his own State but must come to the District of Columbia in order to litigate that question although this bill reserves the right to the Department of Agriculture to seize the apples and litigate them wherever it sees fit throughout the United States. Why should we provide just one court for the citizen of the United States to bring his suit and yet allow the Government to bring its case anywhere it pleases?

Mr. MAPES. The gentleman from Virginia, frankly, has put his finger upon the real issue involved in this court-review section. It is a question for the House to decide whether it is going to follow the recommendation [p. 7772] of the apple-growers' association in writing the section or the recommendation of the Food and Drug Administration. The gentleman from Virginia very accurately has put his finger upon the point in controversy.

The gentleman from Virginia, of course, would not claim that any administrative authority would pass regulations or issue orders without any evidence, as he has indicated might be done. If any administrative officer did that, the court would protect those affected, as it did recently in the stockyards case.

I had not intended to go into the merits of the section in this debate on the rule, but as long as the gentleman from Virginia has raised the question, the House may as well understand what is involved.

Mr. SIROVICH. Mr. Speaker, will the gentleman yield?

Mr. MAPES. I yield.

Mr. SIROVICH. I think the gentleman is perfectly right in the contention he is bringing before the House, because many years ago when we considered the food and drug bill we learned that in the States of Oregon and Washington the apples had been sprayed with a lead-arsenic preparation that was more than the tolerance allowed. The authorities in Massachusetts arrested six or eight trainloads of apples that had more lead arsenic than the law permitted. These apples were thrown into the harbor at Boston. England and France have not permitted many of our apples to go into these countries because the apples contained more lead and arsenic than the tolerance law allowed. Something should be done to protect the consuming public against having their gastrointestinal tracts disturbed by these lead-arsenic preparations.

Mr. MAPES. Mr. Speaker, I thank the gentleman from Virginia and the gentleman from New York for getting the issue so squarely before the House, much better than I could have done without their assistance.

Mr. ROBERTSON. Will the gentleman yield for a very brief question?

Mr. MAPES. I yield to the gentleman.

Mr. ROBERTSON. Has the gentleman ever heard of a single case in the history of the United States, either in medical science or any other science, where anybody has been poisoned through eating an apple with undue spray residue on it? The gentleman cannot cite one case.

[p. 7773]

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Mr. LEA. I should like to call attention briefly to some features of the bill that increase the scope of the present food and drug law. These features include control over adulteration and misbranding of cosmetics and therapeutic devices. There is a provision that drugs intended for diagnosing illness or for remedying underweight or overweight or for otherwise affecting bodily structure or function are subject to regulation. New drugs are required to be adequately tested for safety before they are placed on the market.

Foods that are dangerous because of naturally contained poisons rather than added poisons are brought under regulation. The addition of poison to foods is prohibited except where such addition is necessary or cannot be avoided; and in such cases tolerances are provided limiting the amount of added poison to the extent necessary to safeguard the public health.

At this point I call attention to the question discussed a while ago as spray residue on fruit. This bill provides that the Secretary of Agriculture shall have authority after proper hearing to prescribe the extent of spray residue that shall be permissible. Then the regulation is enforceable. There is nothing in this bill that fails to protect the public health against spray residue. In the present law there is no such authority in the Secretary of Agriculture. The only method of prosecuting in connection with that condition at the present time is to treat spray residue as an adulteration.

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There is no authority by which he can legally adopt regulations. He must resort to the criminal procedure for adulteration. If enacted, this bill would give him the right after proper hearings to adopt regulations prescribing limits. Then a court review would be permitted, and if the interested parties claimed the regulation was invalid, they would have the right to go into court and have that question considered.

Mr. SIROVICH. In other words, the

court would pass on the toxicity of the residue?

Mr. LEA. The court would pass on the validity of the regulation. If the regulation was found valid, that would settle the question and the final decision would become the settled law of the case.

Mr. SIROVICH. That means the court would have to call upon all kinds of medical authority to counteract what the Secretary of Agriculture had already done.

Mr. LEA. No; the finding is made based on the record made at the hearing before the Secretary, and is confined to that record, unless for good cause shown additional evidence is received. If there is substantial evidence to justify the Secretary's finding the case is closed.

Where the other provisions of the law are not effective to control danger to health arising from bacterial contamination of food, temporary license restrictions can be imposed until the difficulty is corrected.

This is largely aimed at contagious diseases that sweep over the country at times, where factories are in the affected territory. In order to reduce the menace to the consuming public over the country, the Secretary can require permits and inspect the suspected factory in order to be sure that its products do not carry contagion to the people of the country.

Definitions and standards of identity are provided under which the integrity of food products can be effectively maintained.

Informative labeling of foods as to quality and composition is required for the information and guidance of consumers. Emphasis is placed on the informative labeling of special dietary foods, such as that for infants and invalids.

The provision under which proceedings could be brought against falsely labeled patent medicines only upon evidence to prove that the manufacturer knew his labels were false is eliminated.

In other words, at the present time it is necessary to prove criminal intent before you can give the consumers the benefit of this protection. Under this bill we look to consumer protection as the primary consideration and make secondary the question of intent with which the article was given out to the public.

[p. 7774]

Mr. LEA. Mr. Chairman, I yield myself 10 additional minutes. I ask the attention of the Committee to the matter of a court review. The bill as it passed the Senate provided for a court review, and the bill as it is presented to the House provides for a court review, and, in my judgment, a very much better provision than the Senate bill. But let us consider the background. We have the most complicated system of government in this country that the world has ever known. A very important feature of it has developed during the last 20 or 30 years, and that is the establishment of bureaus clothed with the authority to make regulations and govern the conduct of the American people.

Those regulations have the force of law, the same as if enacted by the Congress. In making those regulations the departments act as the agents of Congress. A man under this bill, if it is enacted into law, may be sent to prison for as much as 3 years because he has violated a regulation established by the Secretary of Agriculture. That is only one of many instances.

Mr. REES of Kansas. Mr. Chairman, will the gentleman yield?

Mr. LEA. I shall have to decline, because I have only 10 minutes. We have to a startling degree an irresponsible making of laws in the name of Congress, without fair opportunity for thorough consideration, without the country knowing who is responsible for them, written by people the country does not know, and frequently with little opportunity to assure that the regulations are just or wise.

In my judgment one of the greatest menaces to popular government in this country is this vast structure of bureaus. I am not condemning it. I think it is necessary under our system of government. Our State lines have become more or less eliminated by the changes in our economic conditions. It has been inevitable that we must exercise more power here in Washington than in the decades gone by. We must accept that fact; but we must not ignore the fact that the people deserve protection against arbitrary and capricious government, against inexperience and ignorance by the departments that exercise this semilegislative authority.

In this bill we give a broad extension of authority to the Secretary of Agriculture, and in that respect it is one of the broadest bills ever passed by this Congress in ordinary peacetimes.

Mr. TOWEY. Mr. Chairman, will the gentleman yield?

[p. 7775]

Mr. LEA. I am sorry, but I have not the time. We give more authority to the Secretary under this bill than any white man ought to have unless with it there is proper restraint by the courts. That is what we have tried to do here. We have tried to provide an intelligent, fair, and orderly system so that the departments will have rules to go by, so that they will know what their rights are and the people will know what their rights are, and such a procedure can be safely followed.

The present law is very crude and undeveloped. The administrative law in this country has practically been built up on court interpretation. It is indefinite, confusing, and conflicting, not affording certainty to the departments or litigants. It is to remedy that condition that we propose this method of restraint against arbitrary action.

The practical problem presented by court review is whether you are in favor of a government by edict or whether you favor a government by orderly procedure, a government under which the citizen shall have a right to be heard and will get fair consideration before these regulations are enacted. Recently the Supreme Court rendered a decision in reference to the question of what these departments should do.

This bill was written before the Supreme Court decision was handed down, but the bill does in effect what the Supreme Court said these departments ought to do without any legislation by the Congress. The Supreme Court said the maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary it is to their interest, for as we said at the outset if these multiplying agencies deemed to be necessary in our complex society are to serve the purpose for which they were created and endowed with vast powers, they must accredit themselves in accordance with the cherished judicial tradition embodying the basic conception of fair play.

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Mr. LEA. Mr. Chairman, I yield myself 2 additional minutes.

Mr. Chairman, there is one other objective we have not met and that is the court that shall have jurisdiction to try the case. As I understand it, the Secretary wants all cases brought to trial in the city of Washington. The committee thought these cases ought to be tried like other cases, that the citizens throughout the country ought to have the right of trial at the place where they reside or where their principal place of business is located. When the Department sues an individual citizen it sues him wherever jurisdiction may be had. The members of the committee reached the conclusion that the citizen of this country ought to have the same right in reference to this case as in other important cases and have the case tried in the district where he resides or has his principal place of business.

Mr. MARTIN of Colorado. Will the gentleman yield?

Mr. LEA. I yield to the gentleman from Colorado.

Mr. MARTIN of Colorado. I thought we unanimously agreed on that proposition. Is there any difference?

Mr. LEA. What is that?

Mr. MARTIN of Colorado. I thought the committee unanimously agreed on that proposition.

Mr. LEA. We agreed that the local court should be the place of trial, but objection is made to that here, and that seems to be the principal point of dispute; that is, whether anyone who wants to test this must come to Washington or whether or not they will be given the privilege of trial in the district courts throughout the country.

Mr. Chairman, the Members may have read the minority report in this case. I think it is unfair and unwarranted and has a degree of misleading contentions that is regrettable. In the first place, one of these objections that was made by the Department we corrected before the bill was reported. The Secretary's letter was written before this correction was made. It is inserted in the minority report and has been circulated throughout the United States and has been made the basis of propaganda on the theory that the thing which we corrected is still in the bill.

[p. 7776]

Mr. MAPES

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Those are the only two differences between the draft which was submitted to the Secretary before the committee made its report and the draft as it appears before you today. Furthermore, of course, as a practical matter the Members of the House know that this new draft probably was submitted to the Secretary of Agriculture and the Food and Drug Administration before the minority report was drawn up.

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Although I have not examined all the statutes, I am advised, and it is my opinion, that there is no law, on the statute books now of that exact wording applying to any other commission or any administrative agency in the Government. It is a unique provision, as far as I am advised. The usual provision is that if, upon an appeal to the court, the court finds that material evidence has developed since the hearing before the commission or administrative officer, the court shall remand the case to the commission or administrative officer for further testimony. I know of no case where the court itself is allowed to open up the case and take testimony. This is the point involved here.

[p. 7777]

Mr. LEAVY.

Now, why does the gentleman find fault with the court being permitted in this instance, since they make a judgment which is apt to be a final one, to hear further testimony upon the part of either of the parties?

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Mr. MAPES. If I have not made my position clear to the gentleman, I am afraid I cannot do so.

As has been pointed out, this bill provides for proceeding before any district court. These other statutes to which I have been referring and extracts from which I have read, provide that proceedings may be started in the Circuit Court of Appeals of the United States within any circuit wherein the person aggrieved resides or has his principal place of business, or in the Court of Appeals of the District of Columbia.

This legislation goes to the extreme

in giving the right to proceed in any district court.

Mr. BOILEAU.

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On page 58, at line 2 of the bill, there is language which has, as its effect, precluding the Secretary of Agriculture from fixing certain standards. In other words, under the philosophy of that section, the Secretary can fix certain standards, but states, as written now, that so far as fresh fruits and vegetables are concerned and so far as butter and cheese are concerned the Secretary shall not fix standards. This was put in because the friends of the dairy industry thought this was the way to protect the cheese industry.

The butter industry, as I understand it, wants to remain in the bill, but by putting the word "cheese" in there it means the Secretary of Agriculture cannot fix standards for cheese, and the cheese industry is unanimous in wanting the Secretary to fix these standards. I think this will appeal to your good common sense when you stop to realize the different kinds of cheese that are on the market, various types of cheese, imported and domestic; and, therefore, if we are to maintain high standards for cheese, it is necessary that the Secretary of Agriculture retain the power that he now has to fix standards for cheese.

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Mr. REECE of Tennessee. Mr. Chairman, it is not my purpose to undertake a detailed explanation of the bill. The chairman made a very excellent explanation. He also pointed out the importance of an extension and strengthening of our present Food and Drugs Act. A great deal of good has been accomplished under the provisions of the present act. The act has been well administered. The present head of the Pure Food and Drug Administration has been conscientious in the administration of the act, and has done a splendid job for which he is entitled to the thanks of the people of the United States. The Pure Food and Drug Administration has been advised with intimately in the drafting of the present bill. It greatly extends the power of the Administration in dealing with this important subject, and I think I am justified in saying that very provision of this act, with the exception of the court-review provision, substantially meets the views of the Department of Agriculture. The committee which has been considering this legislation now for more than 4 years has been very conscientious, and I feel has not given such earnest and sympathetic consideration to any other legislation that has been before it as it has to this bill dealing with food, drugs, and cosmetics. I fear that, due to the emphasis which has been placed on the court review section today, there is a possibility that the House might be misled as to the bill as a whole. As I said a moment ago, this is a far-reaching bill, and the Department of Agriculture takes no exception substantially to any provision in the bill except the one which contains the court review. Then, in that regard, as the chairman of the committee explained, it is not substantial, and he is going to offer one amendment which we hope will go a long way toward meeting the objection against that provision.

[p. 7778]

Mr. REES of Kansas.

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It has been 30 years since the original Pure Food and Drug Act was passed. Not very many important amendments have been added to this legislation during that period of time. Even that measure passed in 1906 was not written by experienced draftsmen, but by a group of well-intentioned amateurs, who followed the New York law. The original draft was amended and changed before it was seriously considered by Congress. Naturally, such a law did not anticipate many modern practices and changes, and no provision was made for them. These omissions have offered handicaps to public protection. A good many weaknesses have been discovered by enforcement officials in their efforts to administer the statute, and many defects have been brought to light by reason of judicial interpretations.

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Conceding that there are many worth-while features in this bill, why weaken them and make them ineffective by including other provisions which have been pointed out by the Members who have preceded me? This is just another piece of hodgepodge legislation. It has the appearance of being a case where somebody thought we should have legislation on the question of pure food and drugs, and so we have been handed this afternoon, as I view it, a measure which will make the situation much worse than if we did not pass it at all.

[p. 7780]

Mr. LEAVY.

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Now after the apples have been packed and boxed and are ready for shipment, if an inspector finds that the amount of spray carried is beyond the tolerance, which is 0.018 grain per pound of fruit, an infinitesimal part of the apple, the Government agent then requires the entire shipment to be rewashed or else destroyed. And there is no relief to the grower as he is denied the right to question the agent's order, even though it means his financial ruin. We are content and willing to comply with reasonable regulations, but we insist that the regulation fixed is an arbitrary one, without foundation in fact, and, to prove that, a year ago the Food and Drug Administration seized from the Washington Dehydrated Food Co. thousands of dollars' worth of dehydrated apples in St. Louis, and the owner said, "I have complied with your regulations," but the food and drug experts said "no," that he had exceeded the tolerance allowed him in lead, and they labeled those dehydrated apples. He went into the United States District Court for the Eastern District of Missouri and the district court, after a full hearing was had before it without a jury, found there was no basis of fact for the Department regulation on spray residue.

Many of the most important health provisions in the bill are taken care of through regulations. The scientific questions involved are too technical and too complex for Congress to be expected to cope with them in detail. The usual procedure is to leave the details to be filled in by regulations, as has been done in the Interstate Commerce Act and any number of other highly successful statutes. There is nothing radical or revolutionary about the sections in S. 5, which authorize the Secretary of Agriculture to issue a regulation concerning, let us say, the amount of lead and arsenic which will be permitted on apples shipped in interstate commerce. The bill provides that such a regulation shall be issued only on the basis of the best scientific advice and after a public hearing at which there is ample opportunity to present all the evidence on both sides. It is the only rational way of dealing with the problem.

[p. 7781]

1.2b (5) (c) Vol. 83 (1938), June 1: Amended and passed House, pp. 7889, 7891, 7893–7894, 7897–7898, 7903

PURE FOOD AND DRUG BILL

Mr LEA. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (S. 5) to prevent the adulteration, misbranding, and false advertisement of food, drugs, devices, and cosmetics in interstate, foreign, and other commerce subject to the jurisdiction of the United States, for the purposes of safeguarding the public health, preventing deceit upon the purchasing public, and for other purposes.

The motion was agreed to.

[p. 7889]

Mr. MAPES. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. Mapes: Page 83, line 20, strike out all of paragraph (f), section 701, and insert the following:

"(f) In a case of actual controversy as to the validity of any order under subsection (e), any person who will be adversely affected by such order if placed in effect may obtain a review of such order in the circuit court of appeals of the United States within any circuit where such person resides or carries on business by filing in the court, within 60 days from the date of such order, a written petition praying that the order of the Secretary be set aside. A copy of such petition shall be forthwith served upon the Secretary, and thereupon the Secretary shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Secretary. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearings in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code."

[p. 7891]

Mr. VOORHIS. Does the gentleman know whether there has been any legitimate amount of complaint that there has not been sufficient opportunity to get a review of orders up to now?

Mr. MAPES. No. Let me say in that connection—and I am glad the gentleman interrupted me—that under existing law any individual may go into the district court in which he resides for the purpose of obtaining an injunction against any order of the Food and Drug Administration that applies to him, that is arbitrary, capricious, unreasonable, or contrary to law, and that will cause him irreparable damage. No one proposes to take that right away from anyone.

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Mr. ROBERTSON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I do not intend to enter into any elaborate discussion of this amendment. The effect of the amendment is simple. It makes a departmental order supreme and denies to those affected a day in court. It makes it virtually impossible for any user of a spray material for fruit or vegetables to test in court the reasonableness of a departmental order affecting residue tolerance.

The amendment seeks to accomplish this in two ways. In the first place, it provides that if there be any evidence whatever, regardless of how inconsequential or flimsy it may be, to support the findings of the Department of Agriculture, such evidence becomes conclusive and binding upon the court. You do not have any hearing on the facts under this amendment. Of course, the Department would have some evidence, but our position is that it should be evidence that is substantial and that, in the opinion of a reasonable court, would justify the court in upholding the order of the Department that issued it.

The second provision of this amendment—and I could not follow my friend fully on this, but I understood him to say yesterday he wanted to bring all these cases to the District of Columbia. I now understand that some cases could be heard in the circuit court of appeals of the State in which they arose, but if the question at issue is Nation-wide in its effect, it still has to come to the District of Columbia.

[p. 7893]

Mr. SAUTHOFF

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It could undoubtedly prolong litigation and hold it up in one State after another. The way to avoid that, in my judgment, is to hold the hearing before the Secretary, and let the Secretary make his findings. If, then, the applicant feels himself aggrieved, let him take an appeal to the circuit court of appeals rather than to the district court, because there are a limited number of circuit courts of appeal; and, secondly, when a decision is handed down you are more apt to have uniformity of decisions. This stands to reason. In looking over the amendment offered by the gentleman from Michigan it seems to me ample remedy is afforded to any applicant who feels himself aggrieved, because one part of the amendment gives him the opportunity to bring any additional evidence he may have on which to make a showing.

[Here the gavel fell.]

[p. 7894]

Mr. BUCK.

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Mr. Chairman, I shall not use 5 minutes. I just want to cite the actual history of lead-arsenic tolerance for the last few years to show you how necessary it is to have a review of the facts, to find out whether departmental findings are based on facts.

The tolerance for years and years was fixed at 0.003 without any harm whatsoever to consumers. On April 2, 1933, the then Assistant Secretary of Agriculture Tugwell and his advisers became convinced that that was not right, and they fixed the tolerance at 0.014 grain of lead. Only 2 months and 18 days later Secretary Wallace reached a different conclusion and raised it to 0.02 grain, and subsequently it was changed again to 0.018. Now, which determination, if any, was right? What finding was the fact?

The only safety the average citizen, not merely the apple and pear grower, has is to require the Government to prove in every case the soundness of its regulations and the basis on which they rest. There is no way in the world, unless you leave this section in the bill, whereby not merely the apple grower, but the pear grower, or any other producer of perishable commodities can protect himself against such erratic meanderings of the minds of the departmental authorities as I have briefly cited you.

Mr. LEA. Mr. Chairman, it is unfortunate that a question of law and of legitimate procedure for the protection of the people of the United States must be discussed with so much exaggeration and distortion as has been presented here today.

Some time ago I attended a meeting of about 300 lawyers in the city of Washington who were concerned with administrative law. It seemed to be the unanimous opinion of these men, even the men in the Government Departments themselves, that we badly need a provision regulating the court review of administrative proceedings. I believe there is no good lawyer in the United States who will not admit we are seriously in need of legislative improvement of procedure as to administrative law and practice. Our committee recognizes this, and we have attempted in this bill to provide a legitimate, orderly method of hearing these cases and disposing of them more promptly and in a way that will greatly reduce litigation. If more farsighted and progressive, the Departments would welcome provisions such as we have in this bill. With greater prestige to themselves they would face less litigation and dispose of their cases more promptly. But to the static mind every innovation, no matter how beneficial ultimately, is destructive of their rights. They cannot conceive of their being deprived of any arbitrary power to the advantage of the public.

A substitute amendment is proposed here that seeks to gut this court-review section. It does all it can to destroy a legitimate court review without providing one that is of any use. It provides, among other things, that if the record contains any evidence to support the findings, then the court must deny relief against arbitrary action by the administrative agency. The proposal is absurd on the face of it. Nothing could be better written into the law to shield irresponsible government, than the court review in the gentleman's amendment. It is a perfect arrangement for arbitrary exercise of power without legitimate opportunity for the citizen affected to protect himself.

[p. 7897]

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Mr. LEA.

Let me refer again to the apple question. Do not get a perverted view of the apple situation for that is only one phase of this subject. This problem involves regulations adopted by administrative departments with the people of the United States not knowing who is writing the regulations, regulations that have the effect of a law passed by this Congress, Nationwide in scope, for violating which a citizen may be sent to jail for as much as 3 years. Do you want such important functions performed in a perfunctory and irresponsible way, or subject to a procedure that will assure that work being done under a sense of responsibility?

In 1933, after the spraying season was partly over, news came out that certain tolerances only would be permitted. Then came the question of inspection to see whether or not the pears, or apples, or whatever the food might be, conformed. It was proposed that the farmers' fruit would be inspected at New York. He took it to the packing house in California, shipped it to New York on consignment because he could not sell it for cash, and subject to inspection at New York. If it did not conform to the requirements it had either to be reconditioned or destroyed. When you destroy a carload of fruit it means that the average small farmer in California has lost all the profits on his fruit that year. He may have figured on paying off part of his mortgage or doing something for his family, but a regulation like that if carried out would have prevented it. I sincerely hope the substitute amendment will be defeated.

[Here the gavel fell.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan.

The question was taken; and on a division (demanded by Mr. MAPES) there were—ayes 34, noes 57.

So the amendment was rejected.

[p. 7898]

Mr. MAPES. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. MAPES. I am with paragraph 7 of section (f) in it.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Mapes moves to recommit the bill to the Committee on Interstate and Foreign Commerce with instructions to that committee to report the same back to the House forthwith with the following amendment: Strike out paragraph (f) of section 701, beginning on page 83, line 20, and insert the following:

"(f) In a case of actual controversy as to the validity of any order under subsection (e), any person who will be adversely affected by such order if placed in effect, may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where such person resides or carries on business, by filing in the court within 60 days from the date of such order, a written petition praying that the order of the Secretary be set aside. A copy of such petition shall be forthwith served upon the Secretary and thereupon the Secretary shall certifiy and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Secretary. Upon **such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript, a decree affirming, modifying, or setting aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearings in such manner and upon such terms and conditions as the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code."**

Mr. MAPES (interrupting the reading of the motion). Mr. Speaker, with the statement that this is the amendment which I offered in the Committee of the Whole and that it is the provision of the law as applied to the Federal Trade Commission adapted to the food-and-drug bill I ask unanimous consent that the further reading of the motion be dispensed with and that it be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. LEA) there were—ayes 37, noes 59.

So the motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed, and a motion to reconsider was laid on the table.

The title was amended so as to read: "An act to prohibit the movement in interstate commerce of adulterated and misbranded food, drugs, devices, and cosmetics, and for other purposes."

[p. 7903]

1.2b (5) (d) Vol. 83 (1938), June 2: Senate disagrees to House amendments, p. 7955

[No Relevant Discussion on Pertinent Section]

1.2b (5) (e) Vol. 83 (1938), June 10: Senate agrees to conference report, pp. 8731–8738

[No Relevant Discussion on Pertinent Section]

1.2b (5) (f) Vol. 83 (1938), June 13: House agrees to conference report, pp. 9095–9101

Mr LEA. Mr. Speaker, this report was agreed to unanimously by the conferees of the Senate and House. It has also been approved by the Senate.

The conference report proposes legislation under S.5 substantially the same as the bill passed the House. I shall briefly refer to a few changes agreed to by the conferees. I may say in this connection that someone in looking over the bill as it left the House ascertained that there were 97 changes in the Senate bill as passed by the House. Many of these changes were of a minor nature, but all of them were the result of careful attention given by the House committee for the purpose of improving, balancing, and strengthening the bill.

The Senate readily accepted 74 of these changes. There were a few matters in controversy that occupied the 5 days of attention given to the bill while it was in conference. Most of the matters of controversy were of comparatively minor importance. A few were important.

[p. 9095]

Mr. LEAVY. All the growers ask is to comply with any regulation based on facts found after a full and fair hearing and then make the limit whatever that finding discloses it should be.

Mr LEA. I think they will get that opportunity under this bill. In this connection I believe in what the committee has done. We have made a material contribution to the welfare of the departments themselves. In the last few days since this has been a matter of debate, at least two responsible, experienced attorneys in the Government service, connected with important agencies, have told me they think this bill makes a splendid contribution to administrative law; that it will add to the prestige and dignity and success of these agencies themselves. They gave me the viewpoint that these agencies ought to welcome this sort of orderly procedure instead of resisting it, and if so they will gain more public confidence and there will be more justice in what they do and far less reason for the courts to invalidate their actions.

Mr. BUCK. Mr. Speaker, will the gentleman yield?

Mr. LEA. I yield.

Mr. BUCK. I understand this is true if the Secretary of Agriculture acts.

Mr. LEA. Yes.

Mr. BUCK. If he does not act, if he makes no regulation at all, refuses to amend any order, and so forth, the pear grower, the apple grower, the tomato grower, or anybody else affected still has a right to appeal to the courts.

Mr. LEA. That is right. This is a new feature of administrative law and I believe a very important and sensible one. If the Secretary refuses to act when the evidence shows that it is his duty to act, or to repeal an unlawful or an unwarranted finding, that would be subject to review by the courts.

Mr. REECE of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. LEA. I yield.

Mr. REECE of Tennessee. The court review provision included in the conference report is an indication of an advance in the field of administrative law. It is not too much to expect that in the future some similar provision may be adopted in connection with the extension of authority which Congress gives.

Mr. LEA. I think that may well be anticipated.

Mr. LUCAS. Mr. Speaker, will the gentleman yield?

Mr. LEA. I yield.

Mr. LUCAS. Does the gentleman feel that the conference committee could have done anything else than bring in this court review provision in view of what the Court said in the Morgan case?

Mr. LEA. I think not. We have simply recognized constitutional limitations and followed out the sensible suggestions of the Supreme Court. This provision was written, however, before the Court decision was rendered.

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Mr. MEAD. Just one further question, if the gentleman will permit: Is the judicial procedure prescribed in this bill in keeping with the judicial decisions that have been rendered recently, particularly in the Humphreys case and in cases where the executive and the judicial authority have been in conflict? As I understand it, this simplifies and specifies the procedure so that the conflict between the Executive and the judiciary will no longer exist.

Mr LEA. That line, I think, is pretty clearly drawn. We have also followed the recent decision of the Supreme Court, particularly in the Morgan case. We have respected the legitimate division of legislative, executive, and judicial powers.

Mr. MEAD. That is the case I have in mind.

[p. 9098]

Mr. SABATH. Will this aid the courts in the future so that it will not be necessary for the courts to reverse 90 per cent of the cases, and in some instances 100 percent of the rulings? I am referring to the Supreme Court of the United States.

Mr. LEA. Those overturns largely were on account of procedure. It frequently happens that the procedure of a department is so in disregard of recognized principles of justice that the courts naturally go into the case with merited distrust. We will give these departments the prestige and respect they deserve from the people and the courts if they comply with orderly procedure; if they give a fair hearing after notice, and make a full and fair record. When they do that they make it possible to go into a court in a way that they will enjoy the respect of the court. They will be sustained by the court, just as these quasi judicial bodies in the Federal Government are sustained. There is where your weakness is. There is where the fault is.

[p. 9099]

Mr. CHAPMAN. Mr. Speaker, I am very grateful for the gracious sentiment expressed by the gentleman from Tennessee, and I desire also to pay tribute to the interest and activity of the gentleman in helping to perfect a good bill, and this applies also to other members of the committee.

Mr. Speaker, we have a good bill, a bill which I believe will enable the Department of Agriculture, the enforcement agency, to protect more adequately the public than has been possible under the antiquated statute which has been on the books for more than 30 years, and may I say, since the subject has been raised here, as one who joined with the distinguished gentleman from Michigan [MR. MAPES], than whom no man has been more solicitous of the public welfare in the study and drafting of this measure—and who in ability, character, and courage ranks with the finest statesmen it has been my privilege to know—as one who joined with him in filing a minority report, let me say that if the bill reported to the House originally had contained a court-review section such as that contained in the bill we are adopting today, I am sure the gentleman from Michigan and I never would have filed that minority report.

[p. 9100]

The conference report was agreed to.

[p. 9101]